IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

VOITH PAPER GMBH & CO. KG,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 07-226-JJF
	)	**REDACTED –**
JOHNSONFOILS, INC.,	)	**PUBLIC VERSION**
	)	
Defendant.	)	

OPENING BRIEF IN SUPPORT OF PLAINTIFF VOITH PAPER GMBH & CO. KG'S MOTION TO COMPEL DEFENDANT JOHNSONFOILS, INC. TO PROVIDE INFORMATION REQUESTED IN VOITH'S FIRST AND SECOND SETS OF INTERROGATORIES AND TO PRODUCE DOCUMENTS RESPONSIVE TO VOITH'S FIRST AND SECOND REQUESTS FOR DOCUMENTS

YOUNG CONAWAY STARGATT & TAYLOR, LLP

Adam W. Poff (No. 3990)
Chad S.C. Stover (No. 4919)
The Brandywine Building
1000 West Street, 17th Floor
Wilmington, Delaware 19899
(302) 571-6600
cstover@ycst.com

- and -

Neal Goldberg
Neil F. Greenblum
Michael J. Fink
GREENBLUM & BERNSTEIN, P.L.C.
1950 Roland Clarke Place
Reston, Virginia 20191
(703) 716-1191

Attorneys for Plaintiff Voith Paper GmbH & Co. KG

Dated: November 9, 2007

TABLE OF CONTENTS

Page

NATURE AND STAGE OF THE PROCEEDING 2

STATEMENT OF FACTS 4

SUMMARY OF ARGUMENT 8

ARGUMENT 11

I. INTRODUCTION 11

II. VOITH'S INTERROGATORIES NOS. 1-13 REQUEST INFORMATION RELEVANT TO ASSERTED CLAIMS AND DEFENSES OR RELEVANT TO DISCOVERING SUCH INFORMATION 15

III. VOITH'S DOCUMENT REQUESTS SEEK DOCUMENTS RELEVANT TO ASSERTED CLAIMS AND DEFENSES OR RELEVANT TO DISCOVERING SUCH DOCUMENTS 15

IV. JOHNSONFOILS' EVASIVE OBJECTIONS AND RESPONSES DO NOT JUSTIFY ITS FAILURE TO PROVIDE REQUESTED INFORMATION AND DOCUMENTS 16

A. Hypothetical Objections "To The Extent That" A Discovery Request Is Improper Do Not Justify Withholding Relevant Information And Documents 16

B. Objections Based On A Vague Assertion Of Privilege Without a Supporting Privilege Log Do Not Justify Withholding Relevant Information And Documents 18

C. Objections That a Discovery Request is "Overly Broad" Do Not Justify Withholding Relevant Information and Documents 18

D. Objections that a Discovery Request is Vague or Undefined Does Not Justify Withholding Relevant Information and Documents 18

E. Reference to Unidentified and Unavailable Business Records Does Not Justify JohnsonFoils' Failure to Answer Voith's Interrogatories 19

F. Vague Allegations of "Undue Burden" and "Harassment" Do Not Justify JohnsonFoils' Failure to Provide the Requested Information and Documents 20

G. JohnsonFoils' Generic Objection That Voith's Discovery Requests are "Premature" Does Not Justify JohnsonFoils' Failure to Provide the Requested Documents and Information 21

H. The Possibility That JohnsonFoils Will Supplement Its Responses At Some Unspecified Future Date Does Not Justify JohnsonFoils' Failure to Provide the Requested Documents and Information When Due 22

I. The Possibility That a Document Request Encompasses "Voluminous Quantities of Documents" Does Not Excuse JohnsonFoils' Failure to Provide Requested Documents 22

J. That a Discovery Request Is Not Expressly Limited to a Particular Time Frame Does Not Excuse JohnsonFoils' Failure to Provide Requested Documents or Information 23

K. JohnsonFoils' Generic Objection to Voith's Definition of "Defendant" Does Not Justify Withholding Documents and Information 24

L. The Absence of an Agreed Protective Order Does Not Justify JohnsonFoils' Failure to Provide Requested Information and Documents 25

V. CONCLUSION 25

TABLE OF AUTHORITIES

STATUTES AND RULES CITED

Pages

D. Del. Local Rule 26.2 .... passim

35 U.S.C. § 271 5

Fed. R. Civ. P. 16(b) 2, 12

Fed. R. Civ. P. 26(a) 3, 6

Fed. R. Civ. P. 26(b) 17, 18, 23

Fed. R. Civ. P. 26(c) 17, 23

Fed. R. Civ. P. 26(e) 22

Fed. R. Civ. P. 26(g) 21, 22

Fed. R. Civ. P. 33(b) 17

Fed. R. Civ. P. 33(d) 9, 14, 19, 20

Fed. R. Civ. P. 34(a) 24

Fed. R. Civ. P. 34(b) 17

Fed. R. Civ. P. 37(a) 1, 9, 10

Plaintiff Voith Paper GmbH & Co. KG (hereinafter referred to as "Plaintiff" or "Voith") by and through its attorneys, pursuant to Federal Rule of Civil Procedure 37(a), hereby moves this Court to compel Defendant JohnsonFoils, Inc. (hereinafter referred to as "JohnsonFoils" or "Defendant") to provide information requested in "Plaintiff's First Set of Interrogatories to JohnsonFoils, Inc." (Nos. 1-10), served July 26, 2007, ("First Interrogatories") and "Plaintiff's Second Set of Interrogatories to JohnsonFoils, Inc." (Nos. 11-13), served August 16, 2007, ("Second Interrogatories").[1] *See* First Interrogatories, Exh. 1; Second Interrogatories, Exh. 2 (collectively, Voith's "Interrogatories"). Plaintiff further moves this Court to compel the production of documents requested in "Plaintiff's First Set of Requests for Production of Documents to JohnsonFoils, Inc." (Nos. 1-36), served July 26, 2007, ("First RFP"), and "Plaintiff's Second Set of Requests for Production to JohnsonFoils, Inc." (Nos. 37-61), served August 16, 2007, ("Second RFP"). *See* First RFP, Exh. 3; Second RFP, Exh. 4 (collectively, Voith's "RFPs"). Voith's Interrogatories and RFPs are collectively referred to as Voith's "Discovery Requests."

Each of Voith's interrogatories and document requests are properly limited to relevant information and documents. Moreover, as explained further below, no objection stated by JohnsonFoils justifies its continuing refusal to provide the requested discovery. As the parties' correspondence makes clear, JohnsonFoils' response to Voith's repeated attempts to negotiate an end to the parties' discovery dispute has been met with conduct amounting to a refusal to confer.

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[1] Interrogatory No. 11 was originally submitted with Voith's First Interrogatories. Before JohnsonFoils response was due Voith submitted an amended Interrogatory No. 11 with its Second Interrogatories and instructed JohnsonFoils not to answer the original Interrogatory No. 11. Hence, the effective service date for Voith's Interrogatory 11 is August 16, 2007.

Not only that, but JohnsonFoils' efforts to block the progress of discovery in this case has included the extraordinary step of returning boxes of Voith's documents provided in response to JohnsonFoils' discovery requests to Voith. Given the imminent close of document production on February 15, 2007, JohnsonFoils should be compelled to provide requested documents and information without delay.

NATURE AND STAGE OF THE PROCEEDING

This is a patent infringement action. The Complaint was filed by Voith on April 27, 2007, against Defendant JohnsonFoils. *See* Complaint, D.I. 1, Exh. 5. After requesting and obtaining several unopposed extensions of time, JohnsonFoils filed its answer, affirmative defenses, and counterclaims, on August 16, 2007. *See* "Defendant, JohnsonFoils, Inc.'s Answer, Affirmative Defenses, and Counterclaims to Plaintiff, Voith Paper GmbH & Co. KG's Complaint," (JohnsonFoils' "Answer, Defenses, and CounterClaims") D.I. 19, Exh. 6. Voith replied to the Counterclaims on September 5, 2007.

On August 1, 2007, a scheduling conference pursuant to Fed. R. Civ. P. 16(b) was held. A Scheduling Order was entered on August 3, 2007, ordering that the "[e]xchange and completion of contention interrogatories, identification of fact witnesses and document production shall be commenced so as to be completed by February 15, 2008." Rule 16(b) Scheduling Order ("Scheduling Order"), D.I. 17, Exh. 7.

On August 16, 2007, JohnsonFoils served seven (7) deposition notices before written discovery had even begun. Plaintiff objected to these notices as premature under the Scheduling Order. JohnsonFoils subsequently withdrew the notices. JohnsonFoils then filed a "Motion for Summary Judgment That U.S. Patents 5,718,805 and 5,972,168 are Invalid," on August 22, 2007, D.I. 25, which it subsequently withdrew on August 24, 2007, after Plaintiff's counsel objected to Defendant's blatant disregard of the scheduling order. *See* JohnsonFoils' Notice of Motion to Withdraw its Motion for Summary Judgment, dated August 24, 2007, D.I. 26.

JohnsonFoils filed its "Defendant's Motion to Stay the Proceedings Pending Reexamination of the Patents in Suit or in the Alternative For Leave to File a Motion for Summary Judgment Prior to August 20, 2008 That U.S. Patents 5,718,805 and 5, 972,168 are Invalid" on August 28, 2007. D.I. 27. Voith filed its response "Plaintiff Voith Paper GmbH & Co. KG's Response To Defendant's Motion to Stay the Proceedings Pending Reexamination of the Patents in Suit or in the Alternative For Leave to File a Motion for Summary Judgment Prior to August 20, 2008 That U.S. Patents 5,718,805 and 5, 972,168 are Invalid" on September 17, 2007. D.I. 33. JohnsonFoils' Motion is currently pending and no hearing date has been set.

Voith served its Initial Disclosures pursuant to Fed. R. Civ. P. 26(a) and the Court's Scheduling Order on September 21, 2007. JohnsonFoils' Initial Disclosures are dated September 18, 2007. Initial Disclosures, Exh. 8.

Voith served its "First Set of Interrogatories to JohnsonFoils, Inc." (Nos. 1 - 11) and its "First Requests for Production to JohnsonFoils, Inc." (Nos. 1 - 61) on July 26, 2007. JohnsonFoils' "Defendant, JohnsonFoils, Inc.'s Responses to Plaintiff, Voith Paper GmbH & Co. KG's, First Set of Interrogatories," ("First Interrogatory Response," Exh. 9), and its "Defendant, JohnsonFoils, Inc.'s Responses to Plaintiff, Voith Paper GmbH & Co. KG's First Requests for Production of Documents," ("First RFP Response," Exh. 10) are dated August 28, 2007. Voith served its "Second Set of Interrogatories to JohnsonFoils, Inc." (Nos. 11-13) and its "Second Set of Requests for Production to JohnsonFoils, Inc." on August 16, 2007. JohnsonFoils' "Defendant, JohnsonFoils, Inc.'s Responses to Plaintiff, Voith Paper GmbH & Co. KG's, Second Set of Interrogatories" ("Second Interrogatory Response," Exh. 11) and its "Defendant, JohnsonFoils, Inc.'s Responses to Plaintiff, Voith Paper GmbH & Co. KG's Second Requests for Production of Documents," ("Second RFP Response," Exh. 12) are dated September 18, 2007.

STATEMENT OF FACTS

United States Patent Nos. 5,718,805 ("the '805 Patent") and 5,972,168 ("the '168 Patent") (collectively, the "Patents-in-Suit"), are both entitled "Twin Wire Former." The Patents-in-Suit relate to an innovation in paper forming that dramatically improves the quality of manufactured paper. The Patents-in-Suit will expire on September 8, 2010.

The Complaint alleges that "JohnsonFoils is infringing [the Patents-in-Suit]." Complaint, ¶ 1. "The Patents-in-Suit are directed to paper formers, and their methods of use, that utilize a resilient counter-blade technology to promote water drainage." Complaint, ¶ 17.

The Complaint further alleges that JohnsonFoils has "made, used, offered to sell, and/or sold in the United States, and/or imported into the United States, and/or reconstructed, reconfigured, or altered, paper formers, such as the Calhoun 5 paper former and others to be discovered in the course of this lawsuit, that incorporate the technology claimed in the Patents-in-Suit without [Voith's] authorization." Complaint, ¶ 22.

The Complaint also alleges that JohnsonFoils has "induced and/or engaged in contributory infringement by marketing, selling, distributing, maintaining, repairing, reconstructing and/or servicing, within the United States, paper formers, such as the Calhoun 5 paper former and others to be discovered during the course of this lawsuit, that incorporate the technology claimed in the Patents-in-Suit without [Voith's] authorization." Complaint, ¶ 23.

The Complaint further alleges that JohnsonFoils' "making, using, selling, offering for sale, importing, marketing, distributing, maintaining, repairing, reconstructing, alerting and/or servicing paper formers, such as the Calhoun 5 paper former and others to be discovered during the course of this lawsuit, that incorporate the technology of the Patents-in-Suit without [Voith's] authorization, infringed at least one claim of each of the Patents-in-Suit pursuant to at least Title 35 U.S.C. § 271(a), (b), and (c)." Complaint, ¶ 24. In addition, the Complaint alleges that "JohnsonFoils' infringement of the Patents-in-Suit has been willful." Complaint ¶ 26.

The Complaint further requests a judgment that JohnsonFoils has infringed the Patents-in-Suit, that JohnsonFoils has induced infringement and engaged in contributory infringement, and that JohnsonFoils' infringement of the Patents-in-Suit has been willful. *See* Complaint, Prayer for Relief, ¶¶ a, b, d. The Complaint further requests damages, including enhanced damages, for JohnsonFoils' willful infringement. *See* Complaint, Prayer for Relief, ¶¶ c, e, h. In addition, the Complaint requests that JohnsonFoils be "[e]njoined from infringing, either directly or indirectly, the Patents-in-Suit." Complaint, Prayer for Relief, ¶ g.

JohnsonFoils' purports to assert affirmative defenses that the Patents-in-Suit are invalid and unenforceable. *See* Answer, Affirmative Defenses, and Counterclaims, Third Affirmative Defense. JohnsonFoils also purportedly asserts affirmative defenses of prosecution history estoppel, patent misuse, equitable estoppel, waiver, statute of limitations, and laches. *Id.*, Affirmative Defenses. JohnsonsFoils also purports to assert counterclaims for declaratory judgments of non-infringement and patent invalidity, and counterclaim for patent misuse. *Id.*, Counterclaims.

The Scheduling Order reflecting this Court's rulings and the consensus of the parties, entered August 3, 2007, provides that "the exchange and completion of contention interrogatories, identification of fact witnesses and document production shall be commenced so as to be completed by February 15, 2008." Scheduling Order, ¶ 3(a). The Court's Local Rule 26.2 provides that prior to entry of a protective order, a party's confidential documents and information is restricted to counsel of record and their employees. D. Del. Local Rule 26.2.

In accordance with the Scheduling Order, Voith has propounded sixty-one (61) Requests for Production and thirteen (13) Interrogatories requesting documents or information that are either directly relevant to a claim or defense of this action, or are directly related to the discovery of relevant documents or information. *See* Voith's Discovery Requests. Apart from its court filings, JohnsonFoils has provided no documents to Voith in response Voith's First RFP, pending for over one hundred (100) days), and Voith's Second RFP, pending for over eighty (80) days. JohnsonFoils has provided either incomplete information or no information in response to Voith's First Interrogatories, pending for over one hundred (100) days, and Voith's Second Interrogatories, pending for over eighty (80) days.

In addition, JohnsonFoils mentioned but has not provided or made available for inspection a copy of its insurance agreement as required by Fed. R. Civ. P. 26(a)(1)(D), and requested by Voith. *See* Voith RFP No. 33; JohnsonFoils' Initial Disclosures, at 4.

To address JohnsonFoils' failure to provide requested information and documents responsive to Voith's Discovery Requests, Voith provided JohnsonFoils with a detailed response to JohnsonFoils' objections on October 12, 2007. *See* Letter from Neal Goldberg to Ryan O'Donnell dated October 12, 2007. Exh. 13. JohnsonFoils responded that—despite Local Rule 26.2—it would not provide discovery prior to entry of an agreed protective order. *See* Letter from Ryan O'Donnell to Neal Goldberg dated October 18, 2007, Exh. 14. In accordance with JohnsonFoils' proposed schedule, the parties conferred by telephone on October 24, 2007, but did not reach agreement before JohnsonFoils terminated the telephone conference by hanging up. *See* Email from Neal Goldberg to Anthony S. Volpe dated October 24, 2007, Exh. 15; Letter from Neal Goldberg to Anthony S. Volpe dated October 31, 2007, Exh. 16. JohnsonFoils ignored Voith's invitation to resume the telephone conference.

On September 19, 2007, JohnsonFoils asked to review Voith's document production, stating that "[a]s we do not have a protective order at this time, [JohnsonFoils] will review [Voith's Documents] as 'Attorneys' Eyes Only' until [Voith has] an opportunity to classify them under the anticipated protective order." Letter from Anthony S. Volpe to Michael J. Fink, dated September 19, 2007, Exh. 17. In response, Voith repeatedly asked to review JohnsonFoils' documents subject Rule 26.2's confidentiality restrictions, but JohnsonFoils ignored Voith's requests and never made its documents available for inspection. To facilitate the classification of documents, proposed levels of confidentiality for a proposed protective order were provided to JohnsonFoils on September 21, 2007:

> We anticipate that the agreed protective order will have two levels of confidentiality: Highly Confidential and Confidential. The disclosure of Highly Confidential Information will be limited to a party's litigation counsel and qualified experts.

See Letter from Michael J. Fink to Anthony S. Volpe dated September 21, 2007, Exh. 18. Prior to October 24, 2007, JohnsonFoils provided no indication that it objected to the proposed levels of confidentiality. A draft protective order was provided to JohnsonFoils on November 1, 2007. Proposed Protective Order, Exh. 19. As of November 9, 2007, JohnsonFoils has provided no comments or revisions on the proposed protective order. No agreed protective order has been entered in this case.

On October 24, after terminating the parties' telephone conference, JohnsonFoils informed Voith for the first time that it objected to the confidentiality designations originally proposed on September 21, 2007. *See* Letter from Anthony S. Volpe to Neal Goldberg dated October 24, 2007, Exh. 20. Mr. Volpe stated:

> During our telephone conference you stated that you are currently preparing documents to be produced tomorrow, October 25, 2007, in accordance with Michael's "confidential" and "highly confidential" designation. Please understand that we do not agree to these designations and are not bound to them without entry of a protective order.

Id. On November 7, 2008, Voith sent its first document production in boxes of documents bearing production numbers in the range VTH000001 – VTH005391 to JohnsonFoils and requested that JohnsonFoils protect Voith's confidential information. *See* Letter from Neal Goldberg to Anthony S. Volpe dated November 7, 2007, Exh. 21. On November 8, 2008, JohnsonFoils informed Voith that it was returning Voith's documents unopened and would only accept documents in accordance with an agreed protective order. *See* Letter from Anthony S. Volpe to Neal Goldberg dated November 8, 2007, Exh. 22.

JohnsonFoils has not produced any documents responsive to Voith's discovery requests other than documents attached to its pleadings. JohnsonFoils has provided incomplete information in response to Interrogatories Nos. 1, 3, and 11, and no information in response to Interrogatories 2, 4-10, 12, and 13.

SUMMARY OF ARGUMENT

1. Each of Voith's Interrogatories requests information that is relevant to a claim or defense at issue in this case. First, Voith has requested information directly relevant to JohnsonFoils' accused infringing products and activities. *See* Voith's Interrogatory Nos. 1-4, 7-9, 13. Voith has also requested information directly relevant to Voith's damages caused by JohnsonFoils' accused products and activities. *See* Voith's Interrogatories Nos. 1-4, 7-9. In addition, Voith has requested information relevant to JohnsonFoils' defenses and counterclaims, including its contentions. *See* Voith's Interrogatories Nos. 5-6. Voith has also requested

information relevant to identifying persons with relevant information. *See* Voith's Interrogatories Nos. 9-12. In addition, the information requested by Interrogatory 13 is at least relevant to patent infringement and patent validity.

JohnsonFoils has asserted that under Fed. R. Civ. P. 33(d) ("Rule 33(d)") it need not provide the requested answers. However, the option to produce business records in lieu of an answer to an interrogatory, pursuant to Fed. R. Civ. P. 33(d) ("Rule 33(d)"), is limited to circumstances where the answer can be derived or ascertained from specifically identified records of JohnsonFoils that are reasonably available to Voith and where the burden of deriving or ascertaining the answer from those specifically identified business records is the same for Voith as it is for JohnsonFoils. Since JohnsonFoils did not specifically identify any business records from which Voith could reasonably derive or ascertain the answers to the Interrogatories and JohnsonFoils has refused to provide requested documents, Rule 33(d) does not excuse JohnsonFoils' failure to respond.

JohnsonFoils has also refused to provide answers prior to entry of an agreed protective order contrary to this Court's Scheduling Order, requiring that discovery commence, and this Court's Local Rule 26.2, providing that confidential documents and information disclosed prior to the entry of a stipulated protective order are restricted to trial counsel of record and their supervised employees.

JohnsonFoils has provided only incomplete answers to Interrogatories 1, 3, and 11. JohnsonFoils has provided no answer to Interrogatories 2, 4-10, 12, and 13. An evasive or incomplete disclosure, answer, or response is to be treated as a failure to respond. Fed. R. Civ. P. 37(a)(3). Due to the approaching close of document production on February 15, 2008, Voith has been prejudiced by JohnsonFoils' unexcused failure to respond. Accordingly, JohnsonFoils should be compelled to provide answer Voith's interrogatories. Fed. R. Civ. P. 37(a).

2. All documents sought by Voith's document requests are either directly relevant to a claim or defense asserted in this litigation or are relevant to identifying such documents. First, Voith has requested documents relating to accused products, accused activities, and contentions relating to those products and activities. *See* Voith RFP Nos. 1-6, 9-12, 14-21, 23-24, 28-30, 30, 34, 36, 37-46, 50, 55. Voith has also requested documents relating to JohnsonFoils' knowledge of the Patents-in-Suit relevant to JohnsonFoils' willful infringement. *See* Voith RFP Nos. 12-13, 30, 34. In addition, Voith has requested documents that are relevant to JohnsonFoils' asserted invalidity, unenforceabilty, prosecution history estoppel, patent misuse, doctrine of waiver, statute of limitations, and doctrine of laches defenses. *See* Voith RFP Nos. 9-13, 21, 27, 30, 34, 51-54, 56-60. Voith has also requested documents that relate to the accused products and other infringing activities relevant to Voith's damages caused by JohnsonFoils' infringing acts. *See* Voith's RFP Nos. 1-5, 14-21, 23-24, 30, 34. Finally, Voith has requested documents which are themselves relevant documents or which relate to the existence, management, and discovery of relevant documents. *See* Voith RFP Nos. 25-26, 31, 32, 33, 35, 47-49, 61.

Apart from papers attached to its pleadings, JohnsonFoils has produced no documents in response to Voith's sixty-one (61) document requests. JohnsonFoils has refused to produce any documents prior to the entry of an agreed protective order. Because JohnsonFoils' refusal is contrary to the Court's Scheduling Order and Local Rule 26.2, and each of Voith's RFP's is reasonably limited to relevant documents, JohnsonFoils should be compelled to produce the requested documents. Fed. R. Civ. P. 37(a).

ARGUMENT

I. INTRODUCTION

With the February 15, 2008, deadline for the completion of document production fast approaching, JohnsonFoils' continuing refusal to provide requested information and documents prejudices Voith and threatens to severely undermine the Court's Scheduling Order. Each of Voith's Discovery Requests elicits information and documents that are indisputably relevant and most have been pending for over one hundred (100) days. Yet, JohnsonFoils has failed to answer, or in some cases provided woefully incomplete answers to, Voith's Interrogatories. JohnsonFoils has also provided no documents in response to Voith's document requests other than documents attached to its pleadings.

After over a month of fruitless efforts to confer with JohnsonFoils, including Voith's detailed responses to JohnsonFoils' purported objections and Voith's repeated invitations to narrow the parties' disputes, JohnsonFoils has—despite the clear and contrary mandate from the Scheduling Order and Local Rule 26.2—refused to provide requested documents and information prior to entry of an agreed protective order. That JohnsonFoils' refusal is not only improper, but also disingenuous, is evidenced by JohnsonFoils' letter dated September 19, 2007, in which JohnsonFoils expressly requested to review Voith's documents prior to the entry of a protective order.

JohnsonFoils' attempt to thwart Voith's efforts to obtain discovery essential to supporting its claims and defenses is no surprise. From the start of this patent infringement case, JohnsonFoils, the accused infringer of the '805 Patent and the '168 Patent, has sought to prevent Voith from having its day in Court, or even from learning the full extent of JohnsonFoils' infringing acts. First, in derogation of this Court's Scheduling Order, JohnsonFoils filed a motion for summary judgment a year before the first allowable date. After withdrawing its untimely motion, JohnsonFoils petitioned the United States Patent and Trademark Office (the "USPTO") for reexamination of the Patents-in-Suit, and filed a request for a stay and for leave to file its premature summary judgment motion, knowing full well that a stay would likely delay judgment on its infringing activities until after the Patents-in-Suit expire. In a further transparent attempt to improperly bolster its argument for a stay—predicated in part on the fact that discovery had not yet commenced—JohnsonFoils has persistently stonewalled further discovery. In light of its pending request for leave to file its premature motion for summary judgment and the Court's preference for deciding such motions on a complete record, as expressly stated at the Rule 16(b) Scheduling Conference and incorporated in the Scheduling Order, JohnsonFoils' determined effort to block discovery is particularly egregious.

Moreover, with a Markman Hearing scheduled for January 30, 2008, and the scheduled completion of document production arising quickly thereafter on February 15, Voith, as party bearing the burden of proof on infringement, is severely prejudiced by JohnsonFoils' failure to provide the requested discovery. Apart from its various court filings, JohnsonFoils has provided no documents to Voith in response Voith's First RFP, pending for over one hundred (100) days), and Voith's Second RFP, pending for over eighty (80) days. JohnsonFoils has provided either incomplete information or no information in response to Voith's First Interrogatories, pending for over one hundred (100) days, and Voith's Second Interrogatories, pending for over eighty (80) days.

Voith's attempts to confer with JohnsonFoils over a period of seven weeks have been met with evasive objections and unreasonable delays. As detailed below, JohnsonFoils initially interposed a litany of improper objections with its responses, coupled with vague assurances that requested information would be forthcoming, but finally changed its position, and now refuses to cooperate in discovery at all prior to the entry of an agreed protective order. *See* Letter from Anthony S. Volpe to Michael J. Fink, dated September 19, 2007, "September 19 Letter," Exh. 17; Letter from Neal Goldberg to Ryan O'Donnell, dated October 12, 2007, (detailing improper objections in JohnsonFoils' discovery responses), "October 12 Letter," Exh. 13. On September 19, JohnsonFoils acknowledged that this Court's Local Rule 26.2 requires the parties to proceed with discovery, notwithstanding the absence of an agreed protective order. However, in the ensuing weeks, JohnsonFoils refused to either withdraw its improper objections or to provide the requested discovery. *See* October 12 Letter; Letter from Ryan O'Donnell to Neal Goldberg, dated October 18, 2007, Exh. 14.

In a last ditch effort to resolve the pending discovery disputes without this Court's intervention, Voith scheduled a meet and confer teleconference with JohnsonFoils on October 24. Voith began the call by informing JohnsonFoils that Voith was prepared to produce documents responsive to JohnsonFoils requests. In response, instead of fairly addressing issues relating to its improper objections and its failure to provide the requested discovery, JohnsonFoils—after refusing to supplement its discovery responses without an agreed protective order—hung up, and ignored Voith's subsequent invitation to resume the telephone conference. *See* E-Mail from Neal Goldberg to Anthony S. Volpe, dated October 24, 2007, Exh. 15; Letter from Neal Goldberg to Anthony S. Volpe, dated October 31, 2007, Exh. 16. Instead of resuming the parties' scheduled telephone conference, JohnsonFoils reiterated that it would not produce documents prior to the entry of an agreed protective order and further informed Voith that JohnsonFoils "does not agree to [the designations HIGHLY CONFIDENTIAL and

CONFIDENTIAL] and [is] not bound to them without entry of a protective order." Letter from Anthony S. Volpe to Neal Goldberg, dated October 24, 2007, Exh. 20. Thus, not only has JohnsonFoils repudiated its own discovery obligations, but it has actively sought to prevent Voith from producing documents by threatening to ignore Voith's confidentiality designations in derogation of Rule 26.2. *See* Rule 26.2 (requiring parties to protect the confidentiality of all documents designated confidential by a producing party prior to the entry of a protective order). Notwithstanding JohnsonFoils' threats, Voith produced documents to JohnsonFoils on November 7, 2007, but, in view of JohnsonFoils' remarkable assertion that it would not respect Voith's confidentiality designations, asked JohnsonFoils to confirm that it would protect Voith's confidential information. *See* Letter from Neal Goldberg to Anthony S. Volpe, dated November 7, 2008, Exh. 21. Yet, JohnsonFoils, determined to stall the progress of any discovery in this action, informed Voith that it was sending the boxes of documents back pending the entry of an agreed protective order. *See* Letter from Anthony S. Volpe to Neal Goldberg dated November 8, 2007, Exh. 22.

As explained in detail below, there is no justification for JohnsonFoils refusal to provide the requested discovery. Moreover, apart from its improper refusal to commence discovery prior to entry of an agreed protective order, JohnsonFoils' discovery responses are disingenuous on their face. For example, JohnsonFoils refuses to provide any documents in response to Voith's document requests, and, at the same time, in a remarkable misapplication of Fed. R. Civ. P. 33(d), attempts to excuse its failure to provide information requested by Voith's First and Second Interrogatories by inviting Voith to search for the answers in the very documents JohnsonFoils refuses to provide. In view of the fast approaching Markman Hearing in January, and the February 15 deadline for the completion of document production, JohnsonFoils' persistent evasion of its discovery obligations is highly prejudicial to Voith. Accordingly, as explained in greater detail below, JohnsonFoils should be compelled to provide the information requested in Voith's First and Second Interrogatories, and the documents requested in Voith's First and Second Requests for Production.

II. VOITH'S INTERROGATORIES NOS. 1-13 REQUEST INFORMATION RELEVANT TO ASSERTED CLAIMS AND DEFENSES OR RELEVANT TO DISCOVERING SUCH INFORMATION

Each of Voith's Interrogatories requests information that is relevant to a claim or defense at issue in this case. First, Voith has requested information directly relevant to JohnsonFoils' accused infringing products and activities. *See* Voith's Interrogatory Nos. 1-4, 7-9, 13. Voith has also requested information directly relevant to Voith's damages caused by JohnsonFoils' accused products and activities. *See* Voith's Interrogatories Nos. 1-4, 7-9. In addition, Voith has requested information relevant to JohnsonFoils' defenses and counterclaims, including its contentions. *See* Voith's Interrogatories Nos. 5-6. Voith has also requested information relevant to identifying persons with relevant information. *See* Voith's Interrogatories Nos. 9-12. In addition, the information requested by Interrogatory 13 is at least relevant to patent infringement and patent validity.

III. VOITH'S DOCUMENT REQUESTS SEEK DOCUMENTS RELEVANT TO ASSERTED CLAIMS AND DEFENSES OR RELEVANT TO DISCOVERING SUCH DOCUMENTS

Each Discovery Request plainly seeks information that is relevant—or reasonably calculated to discover information that is relevant—to the issues at dispute in this case, including infringement, validity, enforceability, and damages. First, Voith has requested documents relating to accused products, accused activities, and JohnsonFoils' contentions relating to those products and activities. *See* Voith RFP Nos. 1-6, 9-12, 14-21, 23-24, 28-30, 30, 34, 36, 37-46, 50, 55. Voith has also requested documents relating to JohnsonFoils' knowledge of the Patents-in-Suit relevant to JohnsonFoils' willful infringement. *See* Voith RFP Nos. 12-13, 30, 34. In addition, Voith has requested documents that are relevant to JohnsonFoils' asserted invalidity, unenforceabilty, prosecution history estoppel, patent misuse, doctrine of waiver, statute of limitations, and doctrine of laches defenses. *See* Voith RFP Nos. 9-13, 21, 27, 30, 34, 51-54, 56-60. Voith has also requested documents that relate to the accused products and other infringing activities relevant to Voith's damages caused by JohnsonFoils' infringing acts. *See* Voith's RFP Nos. 1-5, 14-21, 23-24, 30, 34. Finally, Voith has requested documents which are themselves relevant documents or which relate to the existence, management, and discovery of relevant documents. *See* Voith RFP Nos. 25-26, 31, 32, 33, 35, 47-49, 61.

IV. JOHNSONFOILS' EVASIVE OBJECTIONS AND RESPONSES DO NOT JUSTIFY ITS FAILURE TO PROVIDE REQUESTED INFORMATION AND DOCUMENTS

Apart from a perfunctory recitation of generic objections and evasive responses, JohnsonFoils—nearly nine weeks from the date its responses were due—has yet to substantially respond. For the reasons provided in detail below, JohnsonFoils' various objections provide no basis for withholding the requested discovery and, in some cases, are plainly improper. Moreover, to the extent that JohnsonFoils had stated an objection to a specific discovery request, JohnsonFoils ignored Voith's repeated invitations to clarify the scope of their objection and identify the documents withheld. As explained in detail below, none of JohnsonFoils' objections justify withholding the requested discovery.

A. Hypothetical Objections "To The Extent That" A Discovery Request Is Improper Do Not Justify Withholding Relevant Information And Documents.

First, JohnsonFoils' failure to provide requested Discovery cannot be excused by the mere possibility that a Discovery Request may be construed to include objectionable documents or information. JohnsonFoils repeatedly objects to Discovery Requests "to the extent that" the request includes documents or information not properly subject to discovery. *See*, e.g., JohnsonFoils' General Objections stated in its Discovery Responses, objecting "to the extent that [Discovery Requests] are overly broad, unduly burdensome, oppressive, [and] premature . . . ." The Federal Rules do not permit a party to craft and rely on a potentially improper interpretation of a discovery request as an excuse to withhold relevant information and documents that are plainly within the scope of the request. On the contrary, JohnsonFoils is required to either produce all relevant documents and information within the scope of the request, comply with provisions relating to the withholding of privileged material, or seek a protective order. *See* Fed. R. Civ. P. 26(b), 26(c); Fed. R. Civ. P. 33(b)(1) (party shall provide answers within the proper scope of an interrogatory); Fed. R. Civ. P. 34(b) (party shall produce documents within the proper scope of a document request). The Federal Rules nowhere sanction the use of such hypothetical or fanciful objections to limit discovery responses. *See* Fed. R. Civ. P. 33(b)(3)(objections must be stated with specificity); Fed. R. Civ. P. 34(b)(reasons for objection must be specified). Moreover, where the purported ground for withholding documents is an asserted privilege, JohnsonFoils is required to identify the nature of the documents and information withheld and, based on that description, identify the applicable privilege. *See* Fed. R. Civ. P. 26(b)(5). Thus, for example, in every instance where JohnsonFoils objected "to the extent that" a request seeks information protected by some privilege, JohnsonFoils was required to identify and describe the materials with sufficient detail to permit Voith to confirm that a proper basis for the asserted privilege exists. *See id.* JohnsonFoils' hypothetical objections do not excuse its failure to produce relevant documents and information.

B. Objections Based On A Vague Assertion Of Privilege Without a Supporting Privilege Log Do Not Justify Withholding Relevant Information And Documents.

JohnsonFoils has also failed to justify withholding documents or information on the basis of privilege. *See* Discovery Responses, throughout. The privilege exception to Rule 26(b) only authorizes withholding requested discovery where a party has identified and described the nature of the discovery withheld, and, based on that description, has further identified an applicable privilege. *See* Fed. R. Civ. P. 26(b)(5). To date, JohnsonFoils has asserted the protections of numerous privileges, but has neither identified nor described the nature of any documents withheld.

C. Objections That a Discovery Request is "Overly Broad" Do Not Justify Withholding Relevant Information and Documents.

JohnsonFoils' objections that various Discovery Requests are "overly broad" also provide no basis for withholding discovery. *See* Discovery Responses, throughout. The Federal Rules do not excuse the obligation to provide relevant discovery based on the mere possibility that a party may craft a broad interpretation of the request that encompasses irrelevant or excluded matter. On the contrary, JohnsonFoils is required to provide requested discovery to the extent that the Discovery Request reasonably identifies relevant subject matter. As explained above, in each case where JohnsonFoils has objected to the breadth of the request, the Discovery Request is clearly directed to relevant subject matter. Moreover, JohnsonFoils' ignored Voith's request that JohnsonFoils clarify its objection and identify the documents being withheld based on the asserted overbreadth of the request.

D. Objections that a Discovery Request is Vague or Undefined Does Not Justify Withholding Relevant Information and Documents.

JohnsonFoils' various objections that a phrase, made up entirely of terms of ordinary language, is vague or undefined, provide no excuse for withholding documents or information. *See, e.g.,* Interrogatory Responses 1, 2, 3, 7, and 8; RFP Responses 1, 2, 3, 5, 6. For each Discovery Request, JohnsonFoils must respond to the extent that the request encompasses relevant material. For example, in its response to Interrogatory 1 JohnsonFoils objects that "one or more resiliently supported blades"—a phrase entirely made up of ordinary terms—is vague and undefined. *See* Interrogatory Response 1, Ex. 9. This phrase plainly encompasses relevant material, as evidenced by JohnsonFoils' response. *Id.* As JohnsonFoils' response concedes, the phrase plainly encompasses the term "resiliently supported strips"—a term disclosed in the Patents-in-Suit. JohnsonFoils repeats this objection to all other Discovery Requests without even identifying the term or phrase that is purportedly vague or undefined. Moreover, JohnsonFoils has ignored Voith's invitation to clarify the scope of its objection and identify the documents being withheld. Since each Discovery Request plainly seeks relevant information and documents, JohnsonFoils' generic "vague and undefined" objection cannot excuse its failure to provide the requested discovery.

E. Reference to Unidentified and Unavailable Business Records Does Not Justify JohnsonFoils' Failure to Answer Voith's Interrogatories.

Having neither produced nor specifically identified any relevant business records, JohnsonFoils cannot properly rely on Fed. R. Civ. P. 33(d) ("Rule 33(d)") to justify its failure to answer Voith's interrogatories. *See* Rule 33(d). Plainly, the possibility that JohnsonFoils may provide Voith with business records—at some unspecified future time—from which an answer to an Interrogatory may be derived or ascertained does not excuse JohnsonFoils' failure to fully answer Voith's Interrogatories at the time its responses were due. *See* Interrogatory Responses, throughout. Rule 33(d) provides no basis for withholding the information requested by Voith's

Interrogatories. On the plain terms of Rule 33, including Rule 33(d), JohnsonFoils was required to provide the information requested in each of Voith's Interrogatories by the date its responses were due. *Id.* Instead of providing the information required, JohnsonFoils repeatedly asserts that the information is contained in JohnsonFoils' documents—documents that JohnsonFoils has neither specified nor made available. JohnsonFoils' reference to unspecified documents that it "will produce" does not operate to convert Rule 33(d) into an indefinite extension. Rule 33(d) does not authorize this plainly evasive conduct. Instead, Rule 33(d) permits a party to answer an Interrogatory by specifically identifying documents made available from which the requesting party can ascertain the requested information with no greater burden than the responding party. *Id.* Because JohnsonFoils has neither identified nor made available any documents containing the requested information, its reliance on Rule 33(d) is improper.

Moreover, because no documents have been identified or made available to Voith, the burden to Voith in deriving or ascertaining the requested information from JohnsonFoils' documents is vastly greater than any burden purportedly imposed on JohnsonFoils. JohnsonFoils repeatedly ignored Voith's invitations to specify and make available the business records referred to in its purported Rule 33(d) responses. The time for complying with the requirements of Rule 33(d) is long past. JohnsonFoils should be required to provide the requested Answers without delay.

F. Vague Allegations of "Undue Burden" and "Harassment" Do Not Justify JohnsonFoils' Failure to Provide the Requested Information and Documents.

JohnsonFoils' failure to provide requested discovery is not justified by its repeated generic objections of "undue burden" and "harassment." *See* Discovery Responses, throughout. Because each Discovery Request is clearly directed to relevant information and documents, the burdens they impose on JohnsonFoils are no different than those imposed on any party involved in litigation. Such burdens are not undue, and cannot justify a failure to respond to a Discovery Request. Moreover, JohnsonFoils has ignored Voith's repeated invitation to identify documents withheld on this basis, and to confer in order to minimize any undue burden and expense. *See* Letter Dated October 12, 2007. Finally, in view of the clear relevance of each Discovery Request, JohnsonFoils' further objection that Voith's Discovery Requests are "harassing" is plainly improper.

G. JohnsonFoils' Generic Objection That Voith's Discovery Requests are "Premature" Does Not Justify JohnsonFoils' Failure to Provide the Requested Documents and Information.

Nor can JohnsonFoils' failure to provide the requested discovery be excused by generically characterizing each request as "premature." *See* Discovery Responses, throughout. Each discovery request requires JohnsonFoils to conduct a reasonable investigation and then answer or produce documents based on that investigation. *See* Fed. R. Civ. P. 26(g)(2) (discovery responses are to be based on a reasonable inquiry). Moreover, JohnsonFoils' failure to either reasonably investigate or include the results of its investigation in its response is not excused by possibility that it will supplement your inadequate responses in the future. *Id.* (response for the purpose of delay is impermissible). As with its other objections, JohnsonFoils ignored Voith's invitation to identify with specificity the documents being withheld based on its objection that the request is "premature." *See* Letter dated October 12. In view of the fact that JohnsonFoils made no effort to supplement its responses despite the substantial passage of time and the approaching close of discovery, its "premature" objection, like its other objections, is no more than an improper delaying tactic, and does not excuse its failure to respond to Voith's Discovery Requests.

H. The Possibility That JohnsonFoils Will Supplement Its Responses At Some Unspecified Future Date Does Not Justify JohnsonFoils' Failure to Provide the Requested Documents and Information When Due.

JohnsonFoils' failure to respond to Discovery Requests is also not excused by the possibility that it will supplement its responses and disclosures at some unspecified future date. *See* Discovery Responses, throughout. The duty under Fed. R. Civ. P. 26(e) ("Rule 26(e)") to supplement disclosures and responses does not extend the time provided for discovery responses. Plainly, the supplementation authorized by Rule 26(e) is limited to information acquired after a proper discovery response—including the results of the required reasonable inquiry—has been provided. *See* Rule 26(e) (after responding, supplementation includes "information thereafter acquired"); Fed. R. Civ. P. 26(g) (requiring disclosure to be complete and correct as of the time of a response). Moreover, Rule 26(e)(1) clearly refers to supplementation made at the time new information is learned. Nowhere does Rule 26(e) cure a failure to provide a timely and proper discovery response in the first instance. Rule 26(e) certainly does not authorize a party to withhold documents and information. JohnsonFoils ignored Voith's request that it identify the documents or information that it intended to include in some future supplement. Indeed, with the passage of time, no such supplement has been forthcoming, and JohnsonFoils should not be excused from disclosing the documents and information available to it upon reasonable investigation.

I. The Possibility That a Document Request Encompasses "Voluminous Quantities of Documents" Does Not Excuse JohnsonFoils' Failure to Provide Requested Documents.

That JohnsonFoils' response to a request would result in the production of "voluminous quantities of documents" is also no reason for withholding documents or information. *See* Discovery Responses, throughout. The Federal Rules are clear that all relevant information and documents must be provided absent the availability of a specifically enumerated exception or a protective order. *See* Fed. R. Civ. P. §§ 26(b), 26(c). The number of documents responsive to a request is neither an exception to Rule 26 nor one of the grounds enumerated for seeking a protective order. Moreover, JohnsonFoils ignored Voith's invitation to confer in order to minimize any purported burden associated with the production of large numbers of documents. *See* Letter dated October 12, 2007. As with its other objections, JohnsonFoils' vague reference to "voluminous quantities of documents" does not justify its failure to produce documents responsive to Voith's relevant document requests.

J. That a Discovery Request Is Not Expressly Limited to a Particular Time Frame Does Not Excuse JohnsonFoils' Failure to Provide Requested Documents or Information.

JohnsonFoils' generic objection that a Discovery Request does not include an express time limitation does not justify withholding documents or information. *See* Discovery Responses, throughout. In view of the clear relevance of each Discovery Request, JohnsonFoils was obligated to supply a time limitation—to the extent such a time limit is necessary—corresponding to the broadest time period that would result in the disclosure of documents and information consistent with Rule 26. The mere possibility that a discovery request may be construed to include an irrelevant time period does not excuse JohnsonFoils' failure to respond to the relevant scope of the request. As with its other objections, JohnsonFoils ignored Voith's repeated invitations to confer regarding reasonable time limitations on any of Voith's Discovery Requests. The mere possibility that a Discovery Request can be interpreted to include documents or information from an irrelevant time period does not excuse JohnsonFoils' total failure to respond.

K. JohnsonFoils' Generic Objection to Voith's Definition of "Defendant" Does Not Justify Withholding Documents and Information.

JohnsonFoils' objection to Voith's definition of "Defendant" is also no basis for withholding documents and information. *See* Discovery Responses, throughout. As a threshold matter, unless a definition results in discovery requests that are clearly contrary to discovery authorized by the Federal Rules of Civil Procedure, it is beyond peradventure that Voith is free to define its own terms, especially where, as in this case, the definition is proper and results in an economy of expression. In accordance with the scope of party discovery expressly authorized by the Federal Rules of Civil Procedure, Voith's Discovery Requests define the term "Defendant" to mean:

> JohnsonFoils, Inc.; any predecessor business organization of the Defendant, and any wholly or partly owned subsidiary, division, parent, joint venture, or other entity in which any or all of Defendant is a material participant or equity interest holder, or was a material participant or equity interest holder at any time.

Plaintiff's Discovery Requests, Definitions. The Federal Rules are clear that JohnsonFoils is obligated to produce all relevant documents and information that are in its "possession, custody, or control." *See* Fed. R. Civ. P. 34(a). Thus, for all persons or entities that JohnsonFoils controls, JohnsonFoils is obligated to produce all documents for which such persons or entities have possession, custody, or control. The same extends to any persons or entities controlled by persons or entities controlled by JohnsonFoils. Thus, Voith's definition of "Defendant"—to include, *inter alia*, divisions, subsidiaries, or other entities over which JohnsonFoils has control—does not extend the scope of any document request or interrogatory beyond that expressly authorized by the Federal Rules. Moreover, JohnsonFoils has ignored Voith's repeated invitations to confer regarding its objections. JohnsonFoils proposed limitations on the scope of Voith's definition of Defendant is no justification for its continuing failure to provide requested information and documents.

L. The Absence of an Agreed Protective Order Does Not Justify JohnsonFoils' Failure to Provide Requested Information and Documents.

Finally, that there has not been an agreement on a Protective Order in this case is no basis for JohnsonFoils to withhold its responses to Discovery Requests. *See* Discovery Responses, throughout. The Court's rules are clear that the absence of an agreed protective order does not operate to delay discovery. Specifically, Local Rule 26.2 ("Confidentiality") provides that, prior to the entry of an agreed protective order, all disclosures are limited to attorneys of record and their staff.[2] In addition, the Scheduling Order, entered August 3, 2007, expressly required that discovery commence.

As described in detail above, JohnsonFoils has failed to provide any basis for withholding documents and information in response to the Discovery Requests.

V. CONCLUSION

For the foregoing reasons, Voith respectfully requests that JohnsonFoils be compelled to answer Voith's Interrogatories and produce documents requested by Voith's Requests for Production. A Proposed Order setting out the requested relief has been filed concurrently with this Motion.

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[2] "If any documents are deemed confidential by the producing party and the parties have not been able to agree on an appropriate protective order, until a protective order is in [2]effect, disclosure should be limited to members and employees of the firm of trial counsel who have entered an appearance, and, where appropriate, have been admitted pro hac vice. Such persons are under an obligation to keep such documents confidential and to use them only for purposes of litigating the case." D. Del. Local Rule 26.2 ("Confidentiality").

Respectfully submitted,

YOUNG CONAWAY STARGATT & TAYLOR, LLP

Adam W. Poff (No. 3990)
Chad S.C. Stover (No. 4919)
The Brandywine Building
1000 West Street, 17th Floor
Wilmington, Delaware 19899
(302) 571-6600
cstover@ycst.com

- and -

Neal Goldberg
Neil F. Greenblum
Michael J. Fink
GREENBLUM & BERNSTEIN, P.L.C.
1950 Roland Clarke Place
Reston, Virginia 20191
(703) 716-1191

Attorneys for Plaintiff Voith Paper GmbH & Co. KG

Dated: November 9, 2007

CERTIFICATE OF SERVICE

I, Chad S.C. Stover, hereby certify that on November 9, 2007, I caused to be electronically filed a true and correct copy of the foregoing document with the Clerk of the Court using CM/ECF, which will send notification that such filing is available for viewing and downloading to the following counsel of record:

George H. Seitz, III, Esquire
Patricia P. McGonigle, Esquire
SEITZ, VAN OGTROP & GREEN, P.A.
222 Delaware Avenue
Suite 1500
P.O. Box 68
Wilmington, DE 19899

I further certify that on November 9, 2007, I caused a copy of the foregoing document to be served by e-mail on the above-listed counsel of record and on the following non-registered participants in the manner indicated:

BY E-MAIL

Anthony S. Volpe, Esquire
Ryan W. O'Donnell, Esquire
Volpe and Koenig
United Plaza, Suite 1600
30 South 17th Street,
Philadelphia, PA 19103

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ Chad S.C. Stover
Adam W. Poff (No. 3990)
Chad S.C. Stover (No. 4919)
The Brandywine Building
1000 West Street, 17th Floor
Wilmington, Delaware 19801
(302) 571-6600
cstover@ycst.com

Attorneys for Voith Paper GmbH & Co. KG

Exhibit 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

VOITH PAPER GMBH & CO. KG, a Company organized and existing under the laws of Germany,	)	
Plaintiff,	)	
v.	)	C.A. No. 07-0226-JJF
JOHNSONFOILS, INC. a Delaware Corporation,	)	
Defendant.	)	

PLAINTIFF'S FIRST SET OF INTERROGATORIES TO JOHNSONFOILS, INC.

Pursuant to Rule 33 of the Federal Rules of Civil Procedure, Plaintiff Voith Paper GmbH & Co. KG (hereinafter, "Plaintiff") requests that Defendant JohnsonFoils, Inc. (hereinafter, "Defendant") answers the following interrogatories separately, fully, and under oath, within thirty (30) days of service. In accordance with Federal Rule of Civil Procedure 26(e), Defendant is subject to a duty to seasonably amend all responses to these interrogatories. The following definitions and instructions apply, as do the definitions set forth in Local Rule 26.5(c).

DEFINITIONS

These interrogatories shall be deemed to be continuing within the meaning of Fed. R. Civ. P. 26 (e) (1) and (2) with respect to any additional information which becomes known to Defendant or its counsel up to and including the time of trial. Answers hereto shall be enlarged, diminished, or otherwise modified to include any information required by Fed. R. Civ. P. 26 (e) (1) and (2) as acquired by Defendant subsequent to the date of its initial answers within a reasonable time after the acquisition of such information.

The singular shall include the plural and *vice versa*, and words in any gender shall include the other gender.

The term "Patents-in-suit" means the patent that are the subject of the above-captioned matter, specifically including U.S. Pat. Nos. 5,718,805 and 5,972,168 (collectively hereinafter "the Patents-in-suit").

The term "Prior Art" shall be construed in accordance with the meaning given that term in Title 35, United States Code, and interpretations thereof provided by the federal judiciary.

The term "Plaintiff" means Voith Paper GmbH & Co. KG

The term "Defendant" means JohnsonFoils, Inc.; any predecessor business organization of the Defendant, and any wholly or partly owned subsidiary, division, parent, joint venture, or other entity in which any or all of Defendant is a material participant or equity interest holder, or was a material participant or equity interest holder at any time.

The term "Person" means any individual or organization, including sole proprietorship, partnership, corporation, association, governmental body or agency, or other legal entity.

The term "Organization" means domestic or foreign, public or private corporations, partnerships or proprietorships, as well as all other business organizations, associations, forms, trustees, or legal entities.

The term "Document" means any medium, upon which information can be communicated, in the possession, custody or control of Defendant, its counsels or its consultants, or known to Defendant, its counsels or its consultants, and is used in a comprehensive sense to include, without limitation, the following items, whether printed, typed, written or produced by hand or stamp, recorded, microfilmed, photographed, video-taped, filmed, stored on information storage means such as data bases, tapes, disks, hard drives, cassettes and/or other memory devices and computer records of any type, or any copy of Documents reproduced by any process, whether or not claimed to be privileged, confidential or personal: letters, notes, memoranda, reports, records, agreements, working papers, communications (including interdepartmental or intradepartmental communications, inter-company or intra-company communications), correspondence, summaries or records of personal conversations, diaries, e-mails, facsimile transmissions, forecasts, statistical statements, tables, graphs, laboratory reports, research reports, notebooks, books, charts, spreadsheets, plans, production files, blueprints, schematics, flow charts, computer programs, including source code and associated documentation both integral and separate from the program, engineering specifications, software specifications, diagrams, drawings, manuals, instructions and/or procedures, including, but not limited to, installation instructions or procedures, operating instructions or procedures, calibration instructions or procedures, maintenance or service instructions or procedures, photographs, minutes or records of meetings, minutes or records of conferences, expressions or statements of policy, lists of persons attending meetings or conferences, recorded statements, interviews or conversations, transcripts, reports or summaries of interviews, reports or summaries of investigations, opinions or reports or summaries of either negotiations or preparations for such, brochures, pamphlets, advertisements, circulars, press releases, price lists, instruments, accounts, bills of sale, purchase orders, quotations, terms of sale, invoices, lists of expenses, both fixed and variable, and all other materials on any tangible medium of expression, and all original and/or preliminary notes. Any comment or notation appearing on any Document, and not a part of the original text, is to be considered a separate "Document." Unless otherwise noted, the

Documents requested are those prepared or existing at the time that Defendant's Answer and Counterclaims were filed in the present action and those prepared since that time.

The terms "Identify" or "Identity," in the case of an individual, mean to state the person's full name; home address (present or last known); employer or business affiliation, business address and position; email address(es), and the relevant time period and nature of each of his present and prior employment positions or affiliations with Defendant.

The terms "Identify" or "Identity," in the case of an Organization, mean to state the organization's full name; type of organization (*i.e.*, corporation, partnership, etc.); the post office address of its principal place of business; date(s) and state(s) or country(ies) of incorporation; the identities of its principal officers and directors; and, any date of dissolution.

The terms "Identity" or "Identify," in the case of a Document, mean to state the Document's title and a description of its subject matter; the type or nature of the Document (*e.g.*, e-mail, letter, memorandum, telegram, chart, laboratory report, etc.); the identity of all person(s) who prepared the Document; the identity of all person(s) to whom copies were provided and/or submitted; the date the Document was prepared; its present location and custodian; and all other means of identifying it with sufficient particularity to satisfy the requirements for its inclusion in a demand or request for its production pursuant to Fed. R. Civ. P. 34.

The term "Identity" or "Identify," in the case of software, computer program, application, system, apparatus, device, component thereof, or other thing, means to describe the system or device, component or thing by name, model number, type, storage capacity, part number, and all other means of identifying it with sufficient particularity to satisfy the requirements for its inclusion in a demand or request for its production pursuant to Fed. R. Civ. P. 34.

In the event Defendant contends that any Document asked to be Identified is privileged or otherwise excludable from discovery, Defendant is requested to specify the basis for the privilege or other grounds for exclusion in addition to the Document Identification information requested above.

The term "Identify with Specificity," in addition to what is requested in the paragraphs above, means to Identify the responsive Documents by Bates number and to particularly point out the specific page(s), paragraph(s) and line(s) where the requested information can be found. In the case of a patent, in addition to the patent number, the specific column and line numbers should be provided.

The terms "Accused Product" and "Accused Products" as used herein means each and every paper forming machine which Defendant has modified, or contracted to modify, to utilize one or more resiliently supported blades.

The term "Client" as used herein means any and all Persons, and/or Organizations that is a client of Defendant in relation with the Accused Products.

The term "Customer" as used herein means any and all Persons, and/or Organizations that is a customer of Defendant in relation with the Accused Products.

INSTRUCTIONS

The form of the responses to this first set of interrogatories is to comply with Federal Rule 33(b) of the Federal Rules of Civil Procedure.

INTERROGATORIES

INTERROGATORY NO. 1:

Identify each and every paper forming machine which Defendant has modified, or contracted to modify, to utilize one or more resiliently supported blades.

INTERROGATORY NO. 2:

For each Accused Product, identify the make and model number of each paper forming machine which was modified, the specific modifications made to each such machine, the owner and location of each such machine, the dates when such modifications were made, and the person(s) most knowledgeable about the modifications made to each such machine.

INTERROGATORY NO. 3:

Identify the Person(s) most knowledgeable about the design, development and/or functionality of the Accused Products.

INTERROGATORY NO. 4:

Identify any and all Clients to whom the Accused Products have been offered, sold, licensed, or otherwise made available.

INTERROGATORY NO. 5:

For each of the Affirmative Defenses and Counterclaims asserted or which will be asserted, identify and specifically describe all facts on which you rely to support those contentions, and identify the Person(s) most knowledgeable about the facts and all documents in support thereof.

INTERROGATORY NO. 6:

Identify the Prior Art which you contend is relevant and/or material to the Patents-in-suit, specify each claim to which each piece of Prior Art relates, describe with particularity why such Prior Art reference is material, i.e. identify with specificity each claim element in the Patents-in-suit which the Prior Art discloses, and why such Prior Art reference is not cumulative over the Prior Art of record considered by the examiner, *i.e.*, identify with specificity the claim elements or combination of claim elements that the Prior Art of record allegedly does not disclose, and state how you contend this Prior Art is applied against each of those claims.

INTERROGATORY NO. 7:

For each claim of each of the Patents-in-suit which Defendant asserts is not infringed by the Accused Products, for each Accused Product, identify each claim limitation which Defendant asserts is not literally present in the Accused Product and describe why the claim is not infringed under the doctrine of equivalents.

INTERROGATORY NO. 8:

For each and every paper forming machine which Defendant has modified to utilize one or more resiliently supported blades, identify the amount charged for the modification and all documents relating thereto.

INTERROGATORY NO. 9:

Identify all Persons whom will be called as witnesses to present testimony at deposition and/or at trial, and state the substance and basis(es) of their testimony.

INTERROGATORY NO. 10:

Identify all Documents that you intend to present at trial and/or hearing.

INTERROGATORY NO. 11:

Identify the individual(s) who are providing the answers to these Interrogatories and the responses to Plaintiff's First Request for Production of Documents submitted herewith.

Dated: July 26, 2007

GREENBLUM & BERNSTEIN, P.L.C.
Neil F. Greenblum
Michael J. Fink
1950 Roland Clarke Place
Reston, VA 20191
(703) 716-1191

Young Conaway Stargatt & Taylor, LLP
Adam W. Poff (No. 3990)
The Brandywine Building
1000 West Street, 17th Floor
Wilmington, Delaware 19899
(302) 571-6642

Attorneys for Voith Paper GmbH & Co. KG

CERTIFICATE OF SERVICE

I hereby certify that a copy of the PLAINTIFF'S FIRST SET OF INTERROGATORIES TO JOHNSONFOILS, INC. was served on Attorneys for Defendant JohnsonFoils, Inc., via Electronic Mail and First Class Mail:

Anthony S. Volpe, Esq.
Ryan W. O'Donnel, Esq.
Randolph J. Huis, Esq.
VOLPE AND KOENIG, P.C.
United Plaza, Suite 1600
30 S. 17th Street
Philadelphia, PA 19103
(215) 568-6400

George H. Seitz, III, Esq. (DE #667)
SEITZ, VAN OGTROP & GREEN, P.A.
222 Delaware Avenue, Suite
P. O. Box 68
Wilmington, DE 19899
(302) 888-7602

Date: July 26, 2007

Neil F. Greenblum
Michael J. Fink
GREENBLUM & BERNSTEIN, P.L.C.
1950 Roland Clarke Place
Reston, Virginia 20191
(703) 716-1191

– and –

Adam W. Poff (DE #3990)
YOUNG CONWAY STARGATT & TAYLOR, LLP
The Brandywine Building
1000 West Street, 17th Floor
Wilmington, Delaware 19899
(302) 571-6642

Attorneys for Plaintiff Voith Paper GmbH & Co. KG

Exhibit 2

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

VOITH PAPER GMBH & CO. KG, a Company organized and existing under the laws of Germany, Plaintiff,	)	
v.	)	C.A. No. 07-0226-JJF
JOHNSONFOILS, INC. a Delaware Corporation, Defendant.	)	

PLAINTIFF'S SECOND SET
OF INTERROGATORIES TO JOHNSONFOILS, INC.

Pursuant to Rule 33 of the Federal Rules of Civil Procedure, Plaintiff Voith Paper GmbH & Co. KG (hereinafter, "Plaintiff") requests that Defendant JohnsonFoils, Inc. (hereinafter, "Defendant") answers the following interrogatories separately, fully, and under oath, within thirty (30) days of service. In accordance with Federal Rule of Civil Procedure 26(e), Defendant is subject to a duty to seasonably amend all responses to these interrogatories. The following definitions and instructions apply, as do the definitions set forth in Local Rule 26.5(c).

DEFINITIONS

These interrogatories shall be deemed to be continuing within the meaning of Fed. R. Civ. P. 26 (e) (1) and (2) with respect to any additional information which becomes known to Defendant or its counsel up to and including the time of trial. Answers hereto shall be enlarged, diminished, or otherwise modified to include any information required by Fed. R. Civ. P. 26 (e) (1) and (2) as acquired by Defendant subsequent to the date of its initial answers within a reasonable time after the acquisition of such information.

The singular shall include the plural and *vice versa*, and words in any gender shall include the other gender.

The term "Patents-in-Suit" means the patent that are the subject of the above-captioned matter, specifically including U.S. Pat. Nos. 5,718,805 and 5,972,168 (collectively hereinafter "the Patents-in-Suit").

The term "Prior Art" shall be construed in accordance with the meaning given that term in Title 35, United States Code, and interpretations thereof provided by the federal judiciary.

The term "Plaintiff" means Voith Paper GmbH & Co. KG

The term "Defendant" means JohnsonFoils, Inc.; any predecessor business organization of the Defendant, and any wholly or partly owned subsidiary, division, parent, joint venture, or other entity in which any or all of Defendant is a material participant or equity interest holder, or was a material participant or equity interest holder at any time.

The term "Person" means any individual or organization, including sole proprietorship, partnership, corporation, association, governmental body or agency, or other legal entity.

The term "Organization" means domestic or foreign, public or private corporations, partnerships or proprietorships, as well as all other business organizations, associations, forms, trustees, or legal entities.

The term "Document" means, in addition to any thing constituting, reflecting, or evidencing any information requested, any medium, upon which information can be communicated, in the possession, custody or control of Defendant, its counsels or its consultants, or known to Defendant, its counsels or its consultants, and is used in a comprehensive sense to include, without limitation, the following items, whether printed, typed, written or produced by hand or stamp, recorded, microfilmed, photographed, video-taped, filmed, stored on information storage means such as data bases, tapes, disks, hard drives, CDs, DVDs, cassettes and/or other memory devices and computer records of any type, or any copy of Documents reproduced by any process, whether or not claimed to be privileged, confidential or personal: letters, notes, memoranda, reports, records, agreements, working papers, communications (including interdepartmental or intradepartmental communications, inter-company or intra-company communications), correspondence, summaries or records of personal conversations, diaries, e-mails, facsimile transmissions, forecasts, statistical statements, tables, graphs, laboratory reports, research reports, notebooks, books, charts, spreadsheets, plans, production files, blueprints, schematics, flow charts, computer programs, including without limitation source code and associated documentation both integral and separate from the program, and further including any installation programs and computational platforms for installing, running, examining, and testing said software, engineering specifications, software specifications, diagrams, drawings, manuals, instructions and/or procedures, including, but not limited to, installation instructions or procedures, operating instructions or procedures, calibration instructions or procedures, maintenance or service instructions or procedures, photographs, minutes and/or records of meetings, minutes and/or records of conferences, expressions or statements of policy, lists of persons attending meetings or conferences, recorded statements, interviews or conversations, transcripts, reports or summaries of interviews, reports or summaries of investigations, opinions or reports or summaries of either negotiations or preparations for such, brochures, pamphlets, advertisements, circulars, press releases, price lists, instruments, accounts, bills of sale, purchase orders, quotations, terms of sale, invoices, lists of expenses, both fixed and variable, and all other materials on any tangible medium of expression, and all original and/or preliminary notes. Any comment or notation appearing on any Document, and not a part of the original text, is to be considered a separate "Document." Any copy of a Document that contains notes, comments, attachments, edits, or writings of any kind not contained in the original copy is to be considered a distinct nonduplicative Document from any other copy not containing its exact notes, comments, attachments, edits or writings. Unless otherwise noted, the Documents requested are those prepared or existing at or before the time that Defendant's Answer and Counterclaims were filed in the present action and those prepared or existing since that time.

The terms "Identify" or "Identity," in the case of an individual, mean to state the person's full name; home address (present or last known); employer or business affiliation, business address and position; email address(es), and the relevant time period and nature of each of his present and prior employment positions or affiliations with Defendant.

The terms "Identify" or "Identity," in the case of an Organization, mean to state the organization's full name; type of organization (*i.e.*, corporation, partnership, etc.); the post office address of its principal place of business; date(s) and state(s) or country(ies) of incorporation; the identities of its principal officers and directors; and, any date of dissolution.

The terms "Identity" or "Identify," in the case of a Document, mean to state the Document's title and a description of its subject matter; the type or nature of the Document (*e.g.*, e-mail, letter, memorandum, telegram, chart, laboratory report, etc.); the identity of all person(s) who prepared the Document; the identity of all person(s) to whom copies were provided and/or submitted; the date the Document was prepared; its present location and custodian; and all other means of identifying it with sufficient particularity to satisfy the requirements for its inclusion in a demand or request for its production pursuant to Fed. R. Civ. P. 34. In response to a request to "Identify" or provide the "Identity" of a document, thing, and/or information, which is not within your custody, possession or control, provide sufficient information to identify the requested document, thing, and/or information and the person or entity having said possession, custody, or control, to satisfy the requirements for a request to production of the document, thing and/or information from said third parties pursuant to Fed. R. Civ. P. 34(c) and Fed. R. Civ. P. 45.

The term "Identity" or "Identify," in the case of software, computer program, application, system, apparatus, device, component thereof, or other thing, means to describe the system or device, component or thing by name, version, build date, release date, model number, type, platform, storage capacity, part number, and all other means of identifying it with sufficient particularity to satisfy the requirements for its inclusion in a demand or request for its production pursuant to Fed. R. Civ. P. 34.

In the event Defendant contends that any Document asked to be Identified is privileged or otherwise excludable from discovery, Defendant is requested to specify the basis for the privilege or other grounds for exclusion in addition to the Document Identification information requested above sufficient to enable Plaintiff to verify that the Document is properly withheld pursuant to Fed. R. Civ. P. 26(a)(5)(a) including a description of the nature of the Document and any information contained in, attached to, or written on the document that is not specifically privileged and/or subject to a protective order.

The term "Identify with Specificity," in addition to what is requested in the paragraphs above, means to Identify the responsive Documents by Bates number and to particularly point out the specific page(s), paragraph(s) and line(s) where the requested information can be found. In the case of a patent, in addition to the patent number, the specific column and line numbers should be provided. The absence of the phrase "Identify with Specificity" from any request does not limit Defendant's obligation to respond fully and completely to that request even where such full and complete response includes information contained or in addition to the information specifically requested when the phrase "Identify with Specificity" is used.

The terms "Accused Product" and "Accused Products" as used herein means each and every paper forming machine which Defendant has modified, or contracted to modify, to utilize one or more resiliently supported blades.

The term "Client" as used herein means any and all Persons, and/or Organizations that is a client of Defendant in relation with the Accused Products.

The term "Customer" as used herein means any and all Persons, and/or Organizations that is a customer of Defendant in relation with the Accused Products.

INSTRUCTIONS

The form of the responses to this first set of interrogatories is to comply with Federal Rule 33(b) of the Federal Rules of Civil Procedure.

Interrogatory No. 11 as amended is included in this Second Set of Interrogatories. Defendant is instructed to respond to the amended Interrogatory No. 11, and not to respond to Plaintiff's original, unamended Interrogatory No. 11 as included in Plaintiff's First Set of Interrogatories.

INTERROGATORIES

INTERROGATORY NO. 11 (AMENDED):

Identify the individual(s) who are providing answers to any of Plaintiff's Interrogatories and the responses to any of Plaintiff's requests for documents, including for each such individual information sufficient to identify the information, Documents, and/or things so provided. For each individual(s) identified who relied on another individual to provide or prepare their answer or response, specifically identify such other individual(s).

INTERROGATORY NO. 12:

Identify any Person with whom Defendant or anyone acting on Defendant's behalf—including without limitation sales, service, and marketing employees, representatives, contractors and/or consultants—has discussed this litigation or communicated about this litigation, including any Documents relating to such discussions or communications.

INTERROGATORY NO. 13:

Identify any efforts or attempts by Defendant or anyone acting on Defendant's behalf to design around the Patents-in-Suit, including any Documents or communications relating to such efforts or attempts.

Dated: August 16, 2007

GREENBLUM & BERNSTEIN, P.L.C.
Neil F. Greenblum
Michael J. Fink
1950 Roland Clarke Place
Reston, VA 20191
(703) 716-1191

Young Conaway Stargatt & Taylor, LLP
Adam W. Poff (No. 3990)
The Brandywine Building
1000 West Street, 17th Floor
Wilmington, Delaware 19899
(302) 571-6642

Attorneys for Voith Paper GmbH & Co. KG

{J214720 00243119.DOC}

CERTIFICATE OF SERVICE

I hereby certify that a copy of the PLAINTIFF'S SECOND SET OF INTERROGATORIES TO JOHNSONFOILS, INC. was served on Attorneys for Defendant JohnsonFoils, Inc., via Electronic Mail and First Class Mail:

Anthony S. Volpe, Esq.
Ryan W. O'Donnel, Esq.
Randolph J. Huis, Esq.
VOLPE AND KOENIG, P.C.
United Plaza, Suite 1600
30 S. 17th Street
Philadelphia, PA 19103
(215) 568-6400

George H. Seitz, III, Esq. (DE #667)
SEITZ, VAN OGTROP & GREEN, P.A.
222 Delaware Avenue, Suite
P. O. Box 68
Wilmington, DE 19899
(302) 888-7602

Date: August 16, 2007

Neil F. Greenblum
Michael J. Fink
GREENBLUM & BERNSTEIN, P.L.C.
1950 Roland Clarke Place
Reston, Virginia 20191
(703) 716-1191

– and –

Adam W. Poff (DE #3990)
YOUNG CONWAY STARGATT & TAYLOR, LLP
The Brandywine Building
1000 West Street, 17th Floor
Wilmington, Delaware 19899
(302) 571-6642

Attorneys for Plaintiff Voith Paper GmbH & Co. KG

Exhibit 3

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

VOITH PAPER GMBH & CO. KG, a Company organized and existing under the laws of Germany,	)	
Plaintiff,	)	
v.	)	C.A. No. 07-0226-JJF
JOHNSONFOILS, INC. a Delaware Corporation,	)	
Defendant.	)	

PLAINTIFF'S FIRST SET OF REQUESTS FOR PRODUCTION
TO JOHNSONFOILS, INC.

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, Plaintiff Voith Paper GmbH & Co. KG (hereinafter, "Plaintiff") requests that Defendant JohnsonFoils, Inc. (hereinafter, "Defendant") produces for inspection and copying all of the following documents and other tangible things that are in its possession, custody, or control. Production shall take place within thirty (30) days of this request, at the offices of Greenblum & Bernstein, P.L.C., 1950 Roland Clarke Place, Reston, Virginia 20191, or at such other location and time as the parties agree. In accordance with Federal Rule of Civil Procedure 26(e), Defendant is subject to a duty to seasonably amend all responses to these requests for production. The following definitions and instructions apply.

DEFINITIONS

Plaintiff incorporates by reference the Definitions contained in Plaintiff's First Set of Interrogatories served concurrently herewith.

INSTRUCTIONS

A. If the requested Document, material, thing, and/or information exists on computer media form, it must be produced as computer media rather than being printed out.

B. If Defendant knows of the existence, past or present, of any Documents or things requested below, but is unable to produce such Documents or things because they are not presently in the possession, custody, or control of Defendant, Defendant shall so state and shall identify such Documents or things, and the Person who has possession, custody, or control of the Documents or things.

C. If any Document is known to have existed and cannot now be located or has been either destroyed or discarded, that Document shall be identified by the last known person(s) who had custody of the Document, the date of the destruction or discard, the manner(s) the Document has been destroyed or discarded, the reason(s) for destruction or discard, the efforts and action(s) made to locate the Document if lost or misplaced, a statement describing the Document, including, but not limited to a summary of its contents, the identity and position or title of its author(s) and of all persons to whom it was sent and/or shown.

D. If Defendant declines to produce any Documents, or thing under the claim of privilege or other objection, it shall identify each such Document or thing by its date, nature, author and addressee if applicable, as well as identify all recipients thereof, and state the name and address of the person in possession of the Document, or the thing by its date, nature, subject matter, the number of pages, attachments or appendices, author and addressee if applicable, position or title of the author(s) and of the addressee(s) if applicable, as well as identify all recipients thereof, such as but not limited to all persons to whom distributed, shown or explained, and state the name and address of the person in possession of the Document, or the thing. Further, Defendant shall state, in compliance with the Protected

Order, the privilege on which it relies in declining to produce the Document and the basis for the claim of privilege or other basis upon which they decline to produce the Document and/or the thing.

E. Documents from any single file should be produced in the same order as they were found in this file, and the files from which they are being produced shall be identified. If copies of Documents are produced in lieu of the originals, such copies must be legible and bound or stapled in the same way then the originals.

F. As to each Document and/or thing produced in response hereto, Defendant shall identify the request for production and where applicable, the interrogatory number, in response to which the Document or thing is being produced.

G. The requests set forth herein shall be deemed continuing pursuant to Fed. R. Civ. P. 26 (e) (1) and (2) so as to require supplemental production of documents and/or things if Defendant discovers responsive Documents and/or things after the date of response hereto despite a diligent effort to provide all responsive Documents within the time specified by Fed. R. Civ. P. 34.

REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1:

All agreements and/or contracts relating to the sale, offer for sale, use, importation, or otherwise making available the Accused Products.

REQUEST FOR PRODUCTION NO. 2:

All Documents relating to or referring to any agreements and/or contracts relating to the sale, offer for sale, use importation, or otherwise making available the Accused Products.

REQUEST FOR PRODUCTION NO. 3:

All Documents (whether in paper or electronic format) referring or relating to, evidencing, showing in particular, but not limited to, the structure, function, or operation of any version of the Accused Products, including but not limited to patent applications, notes, correspondence, memoranda, reports, evaluations, surveys, studys, presentations, technical lectures, talks, prototypes, samples, advertisements, marketing materials, contracts and agreements such as, without limitation, those relating to venture capital, user guides, product literature, preparatory works, drawings, development documentation, product documentation, and maintenance documentation, referring or relating to, evidencing, showing the structure, function, or operation of any version of the Accused Products.

REQUEST FOR PRODUCTION NO. 4:

All Documents relating to internal and/or external complaints, problems, comments, evaluations, survey, analysis, studies or reports regarding the Accused Products.

REQUEST FOR PRODUCTION NO. 5:

All Documents describing, referring or relating to in whole or in part to differences, similarities and/or comparisons between the Accused Product, and either or both of the Patents-in-suit and/or Plaintiff's product(s).

REQUEST FOR PRODUCTION NO. 6:

All Documents, things, and material relating to the design and/or development of all versions of the Accused Products or part thereof, and all Documents, things, and material sufficient to identify all Persons who participated in such design and/or development.

REQUEST FOR PRODUCTION NO. 9:

All Documents, searches, studies, opinions, or evaluations made in connection with either or both of the Patents-in-suit, and all documents referring or relating to such searches, studies, opinions, or evaluations including but not limited to issues of novelty, patentability, validity, enforceability, or enforceable scope of either or both of the Patents-in-suit.

REQUEST FOR PRODUCTION NO. 10:

All Documents concerning the data and/or other information created, viewed or considered by any expert preparing a report or affidavit on behalf of Defendant, in forming his or her opinion.

REQUEST FOR PRODUCTION NO. 11:

All Documents and things referring to or relating to specifications of any Accused Product, including but not limited to marketing requirements, design requirements, functional specifications, detailed design descriptions, test plans, and any other technical or marketing requirements.

REQUEST FOR PRODUCTION NO. 12:

All Documents and things referring to or relating to market or technical research, any studies, patent searches, and/or prior art searches undertaken by the Defendant, or done on Defendant's behalf, including but not limited to materials and information gathered about either or both of the Patents-in-suit or Plaintiff's product(s).

REQUEST FOR PRODUCTION NO. 13:

All Documents referring to or relating to Defendant first becoming aware of either or both of the Patents-in-suit.

REQUEST FOR PRODUCTION NO. 14:

All Documents and things referring to or relating to Defendant's marketing plans, goals and strategies with respect to the Accused Products.

REQUEST FOR PRODUCTION NO. 15:

All Documents and things referring to or relating to Defendant's marketing of the Accused Products, including but not limited to all promotions, demonstrations, presentations, promotional materials and/or offers for sale, licensing and otherwise making the Accused Products available.

REQUEST FOR PRODUCTION NO. 16:

All Documents which refer to or reference Plaintiff and/or Plaintiff's products.

REQUEST FOR PRODUCTION NO. 17:

All Documents and things referring to or relating the Defendant selling, importing, licensing or otherwise making available the Accused Products, including but not limited to any and all proposals, orders, contracts, agreements, and/or invoices.

REQUEST FOR PRODUCTION NO. 18:

All Documents and things illustrating, referring to or relating to Defendant's prices associated with the Accused Products.

REQUEST FOR PRODUCTION NO. 19:

All Documents that refer or relate to any sales and/or contracts concerning the Accused Products, including but not limited to communications with potential and/or actual customers.

REQUEST FOR PRODUCTION NO. 20:

All agreements entered into by the Defendant referring to or relating to installation, maintenance, service and/or warranty of any of the Accused Products.

REQUEST FOR PRODUCTION NO. 21:

All Documents and things referring to or relating to the respective gross and/or net profit, sales, costs and/or expenses realized on and/or in relation to the selling, leasing, licensing, and/or otherwise commercializing the Accused Products, and a breakdown of such income by Accused Product, on a yearly basis, for every year, from 2001 to present.

REQUEST FOR PRODUCTION NO. 23:

All Documents generated by or on behalf of Defendant or any third party referring to or relating to the Plaintiff and/or Plaintiff's products, including but not limited to communications between Defendant and any third party, press releases, news articles, abstracts, conference papers, advertisements and/or promotional materials.

REQUEST FOR PRODUCTION NO. 24:

All Documents and things which concern, analyze, refer and/or relate to any of the Accused Products, whether internal or external communications, to or from Defendant, including but not limited to communications between and among the respective board members, officers, employees, staff members, attorneys, agents or representatives.

REQUEST FOR PRODUCTION NO. 25:

All Documents and things illustrating, referring to or relating to the past and present structure and organization of Defendant, including but not limited to organizational charts, incorporation documents and office location(s), any transfer of assets (such as technology, intellectual property rights), or change of corporate name.

REQUEST FOR PRODUCTION NO. 26:

All Documents concerning or in relation to Defendant's document retention, custody, and/or destruction policy(ies) from 2001 to present.

REQUEST FOR PRODUCTION NO. 27:

All Prior Art on which Defendant relies or intends to rely to support claims of invalidity of any of the Patents-in-suit, including but not limited to all Prior Art cited in any opinions and studies regarding the either or both of the Patents-in-suit.

REQUEST FOR PRODUCTION NO. 28:

All Documents that refer to, relate to, support or refute Defendant's contentions and belief that it has not infringed and is not infringing the Patents-in-suit.

REQUEST FOR PRODUCTION NO. 29:

All Documents that refer to, relate to, support or refute Defendant's contentions and belief that it has not contributed to infringement and has not induced others to infringe, and is not now contributing to infringement nor inducing others to infringe, either or both of the Patents-in-suit.

REQUEST FOR PRODUCTION NO. 30:

To the extent not produced in response to another Request For Production, all Documents which support any defense asserted by Defendants.

REQUEST FOR PRODUCTION NO. 31.

All Documents on which Defendant intends to rely at trial or hearing within this litigation.

REQUEST FOR PRODUCTION NO. 32:

All Documents passing between Defendant and any person that Defendant may call as a witness at trial or hearing within this litigation.

REQUEST FOR PRODUCTION NO. 33.

All Documents and things required to be identified by Fed. R. Civ. P. 26(a) (1).

REQUEST FOR PRODUCTION NO. 34:

All Documents, things, and materials requested to be identified in Plaintiff's First Set of Interrogatories served concurrently herewith.

REQUEST FOR PRODUCTION NO. 35:

All Documents, things, and materials identified and/or containing information used in preparing Defendant's responses to Plaintiff's First Set of Interrogatories served concurrently herewith.

REQUEST FOR PRODUCTION NO. 36:

All Documents and things relating to any attempts to design around any claim(s) of either or both of the Patents-in-suit.

Dated: July 26, 2007

GREENBLUM & BERNSTEIN, P.L.C.
Neil F. Greenblum
Michael J. Fink
1950 Roland Clarke Place
Reston, VA 20191
(703) 716-1191

Young Conaway Stargatt & Taylor, LLP
Adam W. Poff (No. 3990)
The Brandywine Building
1000 West Street, 17th Floor
Wilmington, Delaware 19899
(302) 571-6642

Attorneys for Voith Paper GmbH & Co. KG

CERTIFICATE OF SERVICE

I hereby certify that a copy of the PLAINTIFF'S FIRST SET OF REQUESTS FOR PRODUCTION TO JOHNSONFOILS, INC. was served on Attorneys for Defendant JohnsonFoils, Inc., via Electronic Mail and First Class Mail:

Anthony S. Volpe, Esq.
Ryan W. O'Donnel, Esq.
Randolph J. Huis, Esq.
VOLPE AND KOENIG, P.C.
United Plaza, Suite 1600
30 S. 17th Street
Philadelphia, PA 19103
(215) 568-6400

George H. Seitz, III, Esq. (DE #667)
SEITZ, VAN OGTROP & GREEN, P.A.
222 Delaware Avenue, Suite
P. O. Box 68
Wilmington, DE 19899
(302) 888-7602

Date: July 26, 2007

Neil F. Greenblum
Michael J. Fink
GREENBLUM & BERNSTEIN, P.L.C.
1950 Roland Clarke Place
Reston, Virginia 20191
(703) 716-1191

– and –

Adam W. Poff (DE #3990)
YOUNG CONWAY STARGATT & TAYLOR, LLP
The Brandywine Building
1000 West Street, 17th Floor
Wilmington, Delaware 19899
(302) 571-6642

Attorneys for Plaintiff Voith Paper GmbH & Co. KG

Exhibit 4

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

VOITH PAPER GMBH & CO. KG, a Company organized and existing under the laws of Germany,	)	
Plaintiff,	)	
v.	)	C.A. No. 07-0226-JJF
JOHNSONFOILS, INC. a Delaware Corporation,	)	
Defendant.	)	

PLAINTIFF'S SECOND SET OF
REQUESTS FOR PRODUCTION TO JOHNSONFOILS, INC.

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, Plaintiff Voith Paper GmbH & Co. KG (hereinafter, "Plaintiff") requests that Defendant JohnsonFoils, Inc. (hereinafter, "Defendant") produces for inspection and copying all of the following documents and other tangible things that are in its possession, custody, or control. Production shall take place within thirty (30) days of this request, at the offices of Greenblum & Bernstein, P.L.C., 1950 Roland Clarke Place, Reston, Virginia 20191, or at such other location and time as the parties agree. In accordance with Federal Rule of Civil Procedure 26(e), Defendant is subject to a duty to seasonably amend all responses to these requests for production. The following definitions and instructions apply.

DEFINITIONS

Plaintiff incorporates by reference the Definitions contained in Plaintiff's Second Set of Interrogatories served concurrently herewith.

INSTRUCTIONS

A. If a requested Document, material, thing and/or any information exists on computer media, it must be produced on computer media. If a requested Document, material, thing and/or any information exists both on computer media and some other form, each other form of the Document, material, thing and/or information must be produced in addition to the computer media form if it is not identical to the computer media form with respect to both content and properties, including without limitation the presence of annotations or the Document's legibility.

B. If Defendant knows of the existence, past or present, of any Documents or things requested below, but is unable to produce such Documents or things because they are not presently in the possession, custody, or control of Defendant, Defendant shall so state and shall identify such Documents or things, and the Person who has possession, custody, or control of the Documents or things with sufficient information to identify the requested document, thing, and/or information and the person or entity having said possession, custody, or control, to satisfy the requirements for a request to production of the document, thing and/or information from said third parties pursuant to Fed. R. Civ. P. 34(c) and Fed. R. Civ. P. 45.

C. If any Document is known to have existed and cannot now be located or has been either destroyed or discarded, that Document shall be identified by the last known person(s) who had custody of the Document, the date of the destruction or discard, the manner(s) in which the Document has been destroyed or discarded, the reason(s) for the destruction or discard, the efforts and action(s) made to locate the Document if lost or misplaced, a statement describing the Document, including, but not limited to a summary of its contents, the identity and position or title of its author(s) and of all persons to whom it was sent and/or shown.

D. If Defendant declines to produce any Documents, or thing under the claim of privilege or other objection, it shall identify each such Document or thing by its date, nature—including information sufficient to establish that nondisclosure is warranted under the asserted privilege or objection, including without limitation a disclosure of any nonprivileged information contained in the document—author and addressee if applicable, as well as identify all recipients thereof, and state the name and address of the person in possession of the Document, or the thing by its date, nature, subject matter, the number of pages, attachments or appendices, author and addressee if applicable, position or title of the author(s) and of the addressee(s) if applicable, as well as identify all recipients thereof, such as but not limited to all persons to whom distributed, shown or explained, and state the name and address of the person in possession of the Document, or the thing. Further, Defendant shall state, in compliance with the Federal Rules and any protective order entered in this case, the privilege on which it relies in declining to produce the Document and the basis for the claim of privilege or other basis upon which they decline to produce the Document and/or the thing.

E. Documents from any single file should bc produced in the same order as they were found in this file, and the files from which they are being produced shall be identified. If copies of Documents are produced in lieu of the originals, such copies must be legible and bound or stapled in the same way then the originals. If a copy of a file is produced in the manner in which it is maintained in the ordinary course of business, the original file must be made available for inspection upon request.

F. As to each Document and/or thing produced in response hereto, Defendant shall identify the request for production and where applicable, the interrogatory number, in response to which the Document or thing is being produced. In addition, Defendant shall designate the source of each document, including the name and contact information of the individual in possession, custody or control of the document as it is maintained in the ordinary course of business.

G. The requests set forth herein shall be deemed continuing pursuant to Fed. R. Civ. P. 26 (e) (1) and (2) so as to require supplemental production of documents and/or things if Defendant discovers responsive Documents and/or things after the date of response hereto despite a diligent effort to provide all responsive Documents within the time specified by Fed. R. Civ. P. 34.

REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 37:

All Documents, including, but not limited to, agreements and/or contracts relating to the sale, offer for sale, use, importation, or otherwise making available any paper forming machine which is being modified, is planned to be modified, or is offered to be modified to include at least one resiliently mounted blade.

REQUEST FOR PRODUCTION NO. 38:

All Documents describing, referring or relating to in whole or in part to differences, similarities and/or comparisons between any paper forming machine which is being modified, is planned to be modified, or is offered to be modified to include with at least one resiliently mounted blade and either or both of the Patents-in-Suit and/or Plaintiff's product(s).

REQUEST FOR PRODUCTION NO. 39:

All Documents, things, and material relating to the design and/or development of all versions of any paper forming machine which is being modified, is planned to be modified, or is offered to be modified to include at least one resiliently mounted blade, or part of such paper forming machine thereof, and all Documents, things, and material sufficient to identify all Persons who participated in such design and/or development.

REQUEST FOR PRODUCTION NO. 40:

All Documents and things referring to or relating to specifications of any paper forming machine which is being modified, is planned to be modified, or is offered to be modified to include at least one resiliently mounted blade, including but not limited to marketing requirements, design requirements, functional specifications, detailed design descriptions, test plans, and any other technical or marketing requirements.

REQUEST FOR PRODUCTION NO. 41:

All Documents and things referring to or relating to Defendant's marketing plans, goals, and/or strategies with respect to any paper forming machine having at least one resiliently mounted blade.

REQUEST FOR PRODUCTION NO. 42:

All Documents and things referring to or relating to Defendant's marketing of any paper forming machine having at least one resiliently mounted blade, including but not limited to all promotions, demonstrations, presentations, promotional materials and/or offers for sale, licensing and otherwise making such a paper forming machine available.

REQUEST FOR PRODUCTION NO. 43:

All Documents and things referring to or relating the Defendant selling, importing, licensing or otherwise making available a paper forming machine with at least one resiliently mounted blade, including but not limited to any and all proposals, orders, contracts, agreements, and/or invoices.

REQUEST FOR PRODUCTION NO. 44:

All Documents and things illustrating, referring to or relating to Defendant's prices associated with any paper forming machine with at least one resiliently mounted blade.

REQUEST FOR PRODUCTION NO. 45:

All Documents that refer or relate to any sales and/or contracts concerning paper forming machines having at least one resiliently mounted blade, including but not limited to communications with potential and/or actual customers.

REQUEST FOR PRODUCTION NO. 46:

All Documents and things which concern, analyze, refer and/or relate to any paper forming machine having at least one resiliently mounted blade, whether internal or external communications, to or from Defendant, including but not limited to communications between and among the respective board members, officers, employees, staff members, attorneys, agents or representatives.

REQUEST FOR PRODUCTION NO. 47:

All Documents reviewed and/or relied upon by any person that Defendant may call as a witness at trial or any hearing in this litigation.

REQUEST FOR PRODUCTION NO. 48:

All Documents, things, and/or materials requested to be identified by any Plaintiff interrogatory.

REQUEST FOR PRODUCTION NO. 49:

All Documents, things, and materials identified and/or containing information used in preparing Defendant's responses to any Plaintiff interrogatory.

REQUEST FOR PRODUCTION NO. 50:

All documents and things relating to, supporting, or contradicting your claim that "JohnsonFoils has not infringed any claim of the Patents-in-Suit, either literally or under the doctrine of equivalents."

REQUEST FOR PRODUCTION NO. 51:

All documents and things relating to, supporting, or contradicting your claim that "[e]ach of the Patents-in-Suit is invalid, unenforceable, and void for failure to comply with the provisions of 35 U.S.C. § 101 et seq."

REQUEST FOR PRODUCTION NO. 52:

All documents and things relating to, supporting, or contradicting your claim that "Voith is barred by the doctrine of prosecution history estoppel from presenting a claim interpretation necessary to find infringement of any claim of the Patents-in-Suit."

REQUEST FOR PRODUCTION NO. 53:

All documents and things relating to, supporting, or contradicting your claim that "Voith has misused each of the Patents-in-Suit which renders each of them unenforceable, and Voith is precluded from obtaining any relief in this action due to its misuse."

REQUEST FOR PRODUCTION NO. 54:

All documents and things relating to, supporting, or contradicting your claim that "Voith's claims are barred, in whole or in part, by the [doctrine of equitable estoppel, the doctrine of waiver, the statute of limitations, and the doctrine of laches]."

REQUEST FOR PRODUCTION NO. 55:

All documents and things relating to, supporting, or contradicting your claim that "JohnsonFoils has not induced and is not inducing infringement of any claim of the Patents-in-Suit," and "JohnsonFoils has not in the past and is not now contributing to the infringement of any claim of the Patents-in-Suit."

REQUEST FOR PRODUCTION NO. 56:

All documents and things relating to, supporting, or contradicting your claim that "[a]ll claims of the Patents-in-Suit are invalid under 35 U.S.C. § 102."

REQUEST FOR PRODUCTION NO. 57:

All documents and things relating to, supporting, or contradicting your claim that "[a]ll claims of the Patents-in-Suit are invalid under 35 U.S.C. § 103."

REQUEST FOR PRODUCTION NO. 58:

All documents and things relating to, supporting, or contradicting your claim that "[a]ll claims of the Patents-in-Suit are invalid under 35 U.S.C. § 112."

REQUEST FOR PRODUCTION NO. 59:

All documents and things relating to, supporting, or contradicting your claim that "Voith knew or should have known that JohnsonFoils was not infringing any permissible, reasonable, or valid interpretation of any claim of the Patents-in-Suit" and that "Voith's . . . interpretations of the claims of the Patents-in-Suit are interposed for . . . anti-competitive effect."

REQUEST FOR PRODUCTION NO. 60:

All documents and things relating to, supporting, or contradicting your claim that "Voith knew or should have known of existing prior art that was not before the United States Patent and Trademark Office during the prosecution of the applications leading to the Patents-in-Suit," "that existing prior art is such that Voith knew or should have known that the claims of the Patents-in-Suit were not patentable," "that existing prior art is such that Voith now knows or should have known that its interpretations of the claims of the Patents-in-Suit render them invalid," "Voith knowingly ignored the prior art so it could advance its . . . interpretations of the claims . . . for anti-competitive effects," and "Voith's assertion of . . . interpretations of the claims of the Patents-in-Suit is having an anti-competitive effect on JohnsonFoils."

REQUEST FOR PRODUCTION NO. 61:

All documents and things relating to any communications between Defendant and others about this litigation.

Dated: August 16, 2007

GREENBLUM & BERNSTEIN, P.L.C.
Neil F. Greenblum
Michael J. Fink
1950 Roland Clarke Place
Reston, VA 20191
(703) 716-1191

Young Conaway Stargatt & Taylor, LLP
Adam W. Poff (No. 3990)
The Brandywine Building
1000 West Street, 17th Floor
Wilmington, Delaware 19899
(302) 571-6642

Attorneys for Voith Paper GmbH & Co. KG

{J214720 00243131.DOC}

CERTIFICATE OF SERVICE

I hereby certify that a copy of the PLAINTIFF'S SECOND SET OF REQUESTS FOR PRODUCTION TO JOHNSONFOILS, INC. was served on Attorneys for Defendant JohnsonFoils, Inc., via Electronic Mail and First Class Mail:

Anthony S. Volpe, Esq.
Ryan W. O'Donnel, Esq.
Randolph J. Huis, Esq.
VOLPE AND KOENIG, P.C.
United Plaza, Suite 1600
30 S. 17th Street
Philadelphia, PA 19103
(215) 568-6400

George H. Seitz, III, Esq. (DE #667)
SEITZ, VAN OGTROP & GREEN, P.A.
222 Delaware Avenue, Suite
P. O. Box 68
Wilmington, DE 19899
(302) 888-7602

Date: August 16, 2007

Neil F. Greenblum
Michael J. Fink
GREENBLUM & BERNSTEIN, P.L.C.
1950 Roland Clarke Place
Reston, Virginia 20191
(703) 716-1191

– and –

Adam W. Poff (DE #3990)
YOUNG CONWAY STARGATT & TAYLOR, LLP
The Brandywine Building
1000 West Street, 17th Floor
Wilmington, Delaware 19899
(302) 571-6642

Attorneys for Plaintiff Voith Paper GmbH & Co. KG

Exhibit 5

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

VOITH PAPER GMBH & CO. KG, a Company organized and existing under the laws of Germany,	)	
Plaintiff,	)	
v.	)	C.A. No. __________
JOHNSONFOILS, INC., a Delaware Corporation,	)	**JURY TRIAL DEMANDED**
Defendant.	)	

COMPLAINT

Plaintiff VOITH PAPER GMBH & CO. KG (hereinafter referred to as "Plaintiff") by and through its attorneys, hereby demands a jury trial and alleges, upon information and belief, for its Complaint against Defendant JOHNSONFOILS, INC. (hereinafter referred to as "JOHNSONFOILS" or "Defendant"), as follows:

1. Defendant is infringing U.S. Pat. Nos. 5,718,805 and 5,972,168 (collectively hereinafter "the Patents-in-Suit"), which are owned by Plaintiff.

THE PARTIES

2. Plaintiff is a corporation, organized and existing under the laws of Germany, with its principal place of business at Sankt Poeltener Strasse 43, Heidenheim, Germany 89522.

3. Upon information and belief, Defendant JOHNSONFOILS is a corporation organized and existing under the laws of Delaware, and Defendant's registered agent is The Corporation Trust

Company, located at 1209 Orange Street, Wilmington, Delaware 19801.

4. Upon information and belief, Defendant's principal place of business is located at 4399 Corporate Road, Charleston, South Carolina 29405.

JURISDICTION AND VENUE

5. This action arises under the Patent Laws of the United States of America, 35 U.S.C. §§ 101, *et seq*.

6. Subject matter jurisdiction of this Court is proper under 28 U.S.C. §§1331 and 1338.

7. This Court can properly exercise personal jurisdiction over Defendant JOHNSONFOILS, by virtue of the fact that it is incorporated in the State of Delaware, thereby availing itself of the laws of the State of Delaware and deriving the protections and benefits thereof.

8. Venue for the present action properly lies in this District pursuant to 28 U.S.C. §§ 1391(c) and (d).

THE PATENTS-IN-SUIT

9. U.S. Patent No. 5,718,805 (hereinafter "the '805 patent"), entitled "Twin wire former," was duly and legally issued on February 17, 1998, and is generally directed to a twin-wire former for the production of a paper web from a fiber suspension. A true and correct copy of the '805 patent is attached hereto as Exhibit 1.

10. Plaintiff is the assignee of the '805 patent by virtue of an assignment recorded in the Patent Office on April 13, 2007 at REEL 019147, FRAME 0971-74, and as the assignee, Plaintiff enjoys all of the rights and benefits conferred upon the patent owner, including the exclusive right to sue, to license and to collect past and future damages from infringers of the '805 patent.

11. U.S. Patent No. 5,972,168 (hereinafter "the '168 patent"), entitled "Twin wire former," was duly and legally issued on October 26, 1999, and is generally directed to a twin-wire former for

the production of a paper web from a fiber suspension, and methods of use. A true and correct copy of the '168 patent is attached hereto as Exhibit 2.

12. Plaintiff is the assignee of the '168 patent by virtue of an assignment recorded in the Patent Office on April 13, 2007 at REEL 019147, FRAME 0971-74, and as the assignee, Plaintiff enjoys all of the rights and benefits conferred upon the patent owner, including the exclusive right to sue, to license and to collect past and future damages from infringers of the '168 patent.

13. All maintenance fees for the Patents-in-Suit have been properly paid to the United States Patent & Trademark Office.

BACKGROUND

14. The paper making process involves the use of paper formers for the production of a fiber web, in particular a paper web, from a fiber suspension.

15. One such paper former is the Calhoun 5 Paper Former, which was, upon information and belief, originally installed by Beloit Corporation in Calhoun, Tennessee.

16. Upon information and belief, the original Calhoun 5 Paper Former contained certain stationary elements, which promoted the drainage of water during the paper making process.

17. The Patents-in-Suit are directed to paper formers, and their methods of use, that utilize a resilient counterblade technology to promote water drainage.

18. Upon information and belief, Defendant JOHNSONFOILS has entered the business of modifying existing paper forming machines by utilizing a resilient counterblade technology to promote water drainage.

19. Upon information and belief, Defendant JOHNSONFOILS modified the Calhoun 5 Paper Former, for instance by removing the stationary drainage elements and replacing them with infringing resilient counterblade technology.

20. In so doing, Defendant JOHNSONFOILS has materially altered and reconfigured the existing Calhoun 5 Paper Former, rather than merely replaced used or worn parts, and has therefore made a "new" machine.

COUNT 1 - PATENT INFRINGEMENT

21. Plaintiff incorporates by reference the allegations of paragraphs 1 through 20 above as if fully set forth herein.

22. Defendant JOHNSONFOILS has made, used, offered to sell, and/or sold in the United States, and/or imported into the United States, and/or reconstructed, reconfigured, or altered, paper formers, such as the Calhoun 5 paper former and others to be discovered during the course of this lawsuit, that incorporate the technology claimed in the Patents-in-Suit without Plaintiff's authorization.

23. Defendant JOHNSONFOILS has induced and/or engaged in contributory infringement by marketing, selling, distributing, maintaining, repairing, reconstructing and/or servicing, within the United States, paper formers, such as the Calhoun 5 paper former and others to be discovered during the course of this lawsuit, that incorporate the technology claimed in the Patents-in-Suit without Plaintiff's authorization.

24. The aforementioned acts by Defendant, including making, using, selling, offering for sale, importing, marketing, distributing, maintaining, repairing, reconstructing, alerting and/or servicing paper formers, such as the Calhoun 5 paper former and others to be discovered during the

course of this lawsuit, that incorporate the technology claimed in the Patents-in-Suit without Plaintiff's authorization, infringed at least one claim of each of the Patents-in-Suit pursuant to at least Title 35 U.S.C.§ 271(a), (b), and (c).

25. Defendant does not have a license to make, use, sell, offer for sale or import paper formers which incorporate the technology covered by at least one claim of each of the Patents-in-Suit.

26. Defendant's infringement of the Patents-in-Suit has been willful.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff seeks a judgment against Defendant as follows:

a. Declaring that Defendant has infringed the Patents-in-Suit;

b. Declaring that Defendant has induced infringement and engaged in contributory infringement of the Patents-in-Suit;

c. Awarding Plaintiff damages for Defendant's infringement of the Patents-in-Suit;

d. Declaring that Defendant's infringement of the Patents-in-Suit has been willful;

e. Awarding Plaintiff treble damages and attorneys fees for Defendant's willful infringement of the Patents-in-Suit;

f. Declaring that the case is exceptional pursuant to 35 U.S.C.§ 285;

g. Enjoining Defendant from infringing, either directly or indirectly, the Patents-in-Suit; and

h. Awarding Plaintiff such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial as to all issues so triable.

YOUNG CONAWAY STARGATT & TAYLOR, LLP

Adam W. Poff (No. 3990)
The Brandywine Building
1000 West Street, 17th Floor
Wilmington, DE 19801
(302) 571-6642
apoff@ycst.com

Attorneys for Plaintiff
VOITH PAPER GMBH & CO. KG

OF COUNSEL:

Neil F. Greenblum
Michael J. Fink
Benjamin P. Kota
GREENBLUM & BERNSTEIN, P.L.C.
1950 Roland Clarke Place
Reston, Virginia 20191
(703) 716-1191

Dated: April 27, 2007

Exhibit 6

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

VOITH PAPER GMBH & CO. KG,

Plaintiff,

v.

JOHNSONFOILS, INC.,

Defendant.

C.A. No. 07-226-JJF

DEFENDANT, JOHNSONFOILS, INC.'S, ANSWER, AFFIRMATIVE DEFENSES, AND COUNTERCLAIMS TO PLAINTIFF, VOITH PAPER GMBH & CO. KG'S, COMPLAINT

Defendant, JohnsonFoils, Inc. ("JohnsonFoils"), by and through its undersigned counsel, hereby responds to the allegations in Plaintiff, Voith Paper GmbH & Co. KG's ("Voith"), Complaint as follows, and asserts the following Affirmative Defenses and Counterclaims.

1. Denied.

2. JohnsonFoils is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and denies the same.

3. Admitted.

4. Denied.

5. Denied.

6. Denied.

7. Denied as a conclusion of law; however, it is admitted that JohnsonFoils is a Delaware corporation.

8. Denied.

9. Denied as conclusions of law to which no responsive pleading is required.

10. Denied as conclusions of law to which no responsive pleading is required.

11. Denied as conclusions of law to which no responsive pleading is required.

12. Denied as conclusions of law to which no responsive pleading is required.

13. Denied as conclusions of law to which no responsive pleading is required.

14. Denied as stated. It is admitted that formation is a part of the paper making process.

15. JohnsonFoils is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and denies the same.

16. JohnsonFoils is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and denies the same.

17. Denied as conclusions of law to which no responsive pleading is required.

18. To the extent the paragraph is understood, it is denied; however, it is admitted that JohnsonFoils is engaged in designing and building improved drainage devices.

19. Denied.

20. Denied.

21. Paragraph 21 of Voith's Complaint is a transitional paragraph to which no response is required.

22. Denied.

23. Denied.

24. Denied.

25. Denied.

26. Denied.

JohnsonFoils further denies that Voith is entitled to any of the relief requested in its Prayer for Relief.

AFFIRMATIVE DEFENSES

First Affirmative Defense

Voith fails to state a claim upon which relief can be granted.

Second Affirmative Defense

JohnsonFoils has not infringed any claim of the Patents-in-Suit, either literally or under the doctrine of equivalents.

Third Affirmative Defense

Each of the Patents-in-Suit is invalid, unenforceable, and void for failure to comply with the provisions of 35 U.S.C. § 101 *et seq.*

Fourth Affirmative Defense

Voith is barred by the doctrine of Prosecution History Estoppel from presenting a claim interpretation necessary to find infringement of any claim of the Patents-in-Suit.

Fifth Affirmative Defense

Voith has misused each of the Patents-in-Suit which renders each of them unenforceable, and Voith is precluded from obtaining any relief in this action due to its misuse.

Sixth Affirmative Defense

Voith's claims are barred, in whole or in part, by the doctrine of equitable estoppel.

Seventh Affirmative Defense

Voith's claims are barred, in whole or in part, by the doctrine of waiver.

Eighth Affirmative Defense

Voith's claims are barred, in whole or in part, by the statute of limitations.

Ninth Affirmative Defense

Voith's claims are barred, in whole or in part, by the doctrine of laches.

COUNTERCLAIMS

Defendant and Counterclaimant, JohnsonFoils, Inc. ("JohnsonFoils"), hereby asserts the following counterclaims against Voith:

Parties

1. Upon information and belief, Plaintiff and Counterclaim Defendant, Voith Paper GmbH & Co. KG's ("Voith"), is a corporation organized and existing under the laws of Germany, with its principal place of business at Sankt Poeltener Strasse 43, Heidenheim, Germany 89522.

2. Defendant and Counterclaimant, JohnsonFoils, is a corporation organized and existing under the laws of the State of Delaware.

3. Defendant and Counterclaimant, JohnsonFoils has its principal place of business located at 40 Progress Avenue, Springfield, MA 01104.

Jurisdiction and Venue

4. Voith has invoked the jurisdiction and venue of this Court by filing its Complaint arising out of the same subject matter as JohnsonFoils' counterclaims.

5. Jurisdiction arises under 28 U.S.C. §§ 1331, 1338, 1367, 2201 and 2202.

6. Venue is proper in this District under 28 U.S.C. §§ 1391 and 1400.

Background

7. JohnsonFoils is in the business of researching, designing and developing drainage equipment, cleaning systems, ceramic products and technology for the management of water removal and sheet formation on pulp and paper machines.

8. On April 27, 2007, Voith filed a Complaint alleging that JohnsonFoils infringed the Patents-in-Suit.

9. U.S. Patent Nos. 5,718,805 ('805 Patent) and 5,972,168 ('168 Patent), (collectively hereinafter the "Patents-in-Suit") were attached as Exhibits "1" and "2" to Voith's Complaint.

First Counterclaim
Declaratory Judgment of Non-Infringement of the Patents-in-Suit

10. The allegations in Paragraphs 1-9 of JohnsonFoils' Counterclaims are incorporated by reference as though fully set forth herein.

11. An actual controversy requiring a declaration of rights by this Court exists under the Patent Act between JohnsonFoils and Voith concerning the alleged infringement and the invalidity of the Patents-in-Suit.

12. JohnsonFoils' counterclaim for declaratory relief is brought pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201, *et seq.* and 35 U.S.C. §§ 1, *et seq.*

13. JohnsonFoils has not and does not infringe, literally or under the doctrine of equivalents, any claim of the Patents-in-Suit.

14. JohnsonFoils has not induced and is not inducing infringement of any claim of the Patents-in-Suit.

15. JohnsonFoils' has not in the past and is not now contributing to the infringement of any claim of the Patents-in-Suit.

16. JohnsonFoils is entitled to a declaratory judgment that it has not in the past infringed and is not now infringing any claim of the Patents-in-Suit.

Second Counterclaim
Declaratory Judgment that the Patents-in-Suit Are Invalid

17. The allegations in Paragraphs 1-16 of JohnsonFoils' Counterclaims are incorporated by reference as though fully set forth herein.

18. All claims of the Patents-in-Suit are invalid under 35 U.S.C. § 102.

19. All claims of the Patents-in-Suit are invalid under 35 U.S.C. § 103.

20. All claims of the Patents-in-Suit are invalid under 35 U.S.C. § 112.

21. JohnsonFoils is entitled to a declaratory judgment that the all claims of the Patents-in-Suit are invalid, unenforceable, and void pursuant to 35 U.S.C. §§ 101 *et seq.*

Third Counterclaim
Patent Misuse

22. JohnsonFoils incorporates paragraphs 1-21 of its Counterclaims as if fully set forth herein.

23. On information and belief, Voith has misused the Patents-in-Suit by filing the present action against JohnsonFoils for patent infringement when Voith knew or should have known that JohnsonFoils was not infringing any permissible, reasonable or valid interpretation of any claim of the Patents-in-Suit.

24. On information and belief, Voith's impermissible, unreasonable or invalid interpretations of the claims of the Patents-in-Suit are interposed for the purposes of this suit and its anti-competitive effect.

25. On information and belief, Voith knew or should have known of existing prior art that was not before the United States Patent and Trademark Office during the prosecution of the applications leading to the Patents-in-Suit.

26. On information and belief, that existing prior art is such that Voith knew or should have known that the claims of the Patents-is-Suit were not patentable.

27. On information and belief, that existing prior art is such that Voith now knows or should have known that its interpretations of the claims of the Patents-in-Suit render them invalid.

28. On information and belief, Voith knowingly ignored the existing prior art so it could advance its impermissible, unreasonable or invalid interpretations of the claims of the Patents-in-Suit and use them as a jurisdictional basis for this sham suit and its anti-competitive effects.

29. Voith's assertion of impermissible, unreasonable or invalid interpretations of the claims of the Patents-in-Suit is having an anti-competitive effect on JohnsonFoils.

RELIEF

WHEREFORE, JohnsonFoils requests that this Court enter a judgment that:

(a) Dismisses Voith's Complaint with prejudice and denies all of the relief it requested therein;

(b) Voith and all persons in active concert or participation with it are enjoined from threatening or charging JohnsonFoils, its suppliers, customers or distributors with infringement of U.S. Patent Nos. 5,718,805 and 5,972,168;

(c) JohnsonFoils its suppliers, customers and distributors are not liable for any infringement of U.S. Patent Nos. 5,718,805 and 5,972,168;

(d) That U.S. Patent Nos. 5,718,805 and 5,972,168 are invalid, unenforceable, and void pursuant to 35 U.S.C. §§ 101 *et seq.*;

(e) That Voith is not entitled to costs pursuant to 35 U.S.C. § 288;

(f) Awards JohnsonFoils damages arising out of Voith's misuse of U.S. Patent Nos. 5,718,805 and 5,972,168;

(g) This is an exceptional case entitling JohnsonFoils to an award of its attorneys' fees and costs pursuant to 35 U.S.C. § 285;

(h) That JohnsonFoils is entitled to prejudgment interest and post-judgment interest on the above damages awards; and

(i) Such other and further relief as this Court may deem appropriate.

JURY TRIAL DEMAND

A trial by jury is demanded.

Dated: August 13, 2007

Respectfully submitted,

Seitz, Van Ogtrop & Green, P.A.

/s/ George H. Seitz, III

George H. Seitz, III (DE #667)
gseitz@svglaw.com
Patricia P. McGonigle (DE #3126)
pmcgonigle@svglaw.com
222 Delaware Avenue, Suite 1500
P.O. Box 68
Wilmington, DE 19801
(302) 888-7602

Anthony S. Volpe
Randolph J. Huis
Ryan W. O'Donnell
Volpe and Koenig, P.C.
United Plaza, Suite 1600
30 South 17th Street
Philadelphia, PA 19103
(215) 568-6400

Attorneys for Defendant
JohnsonFoils, Inc.

CERTIFICATE OF SERVICE

I, *Patricia P. McGonigle*, Esquire, hereby certify that on this 13th day of August 2007, I electronically filed the foregoing pleading:

DEFENDANT, JOHNSONFOILS, INC.'S, ANSWER, AFFIRMATIVE DEFENSES, AND COUNTERCLAIMS TO PLAINTIFF, VOITH PAPER GMBH & CO. KG'S, COMPLAINT

with the Clerk of Court using CM/ECF which will send notification of such filing to all counsel of record.

/s/ *Patricia P. McGonigle*

Patricia P. McGonigle (ID No. 3126)
pmcgonigle@svglaw.com

Exhibit 7

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

VOITH PAPER GMBH & CO. KG, a Company organized and existing under the laws of Germany, Plaintiff,	)	C.A. No. 07-0226-JJF
v.	)	
JOHNSONFOILS, INC. a Delaware Corporation, Defendant.	)	

RULE 16(b) SCHEDULING ORDER

The parties having satisfied their obligations under Fed. R. Civ. P. 26(f), and as discussed at the scheduling conference on August 1, 2007,

IT IS ORDERED that:

1. **Pre-Discovery Disclosures.** The parties will exchange by September 21, 2007, the information required by Fed. R. Civ. P. 26(a) (1) and D. Del. LR 16.2.

2. **Joinder of other Parties.** All motions to join other parties shall be filed on or before December 21, 2007.

3. **Discovery.**

(a) Exchange and completion of contention interrogatories, identification of fact witnesses and document production shall be commenced so as to be completed by February 15, 2008.

(b) Maximum of 25 interrogatories, including contention interrogatories, for each side.

(c) Maximum of 50 requests for admission by each side.

(d) Maximum of 10 depositions by plaintiff and 10 by defendant, excluding expert depositions. Depositions shall not commence until the discovery required by Paragraph 3 (a, b and c) is completed.

(e) Reports from retained experts required by Fed. R. Civ. P. 26(a) (2) shall be served from the party with the burden of proof on May 21, 2008, rebuttal expert reports shall be served on June 18, 2008.

(f) Any party desiring to depose an expert witness shall notice and complete said deposition no later than thirty (30) days from receipt of said expert's report, unless otherwise agreed in writing by the parties or ordered by the Court.

(g) Fact discovery shall close on April 30, 2008.

(h) Expert discovery shall close on July 18, 2008.

4. **Non-Case Dispositive Motions.**

(a) Any non-case dispositive motion, along with an Opening Brief, shall be filed with a Notice of Motion. The Notice of Motion shall indicate the date on which the movant seeks to have the motion heard. The date selected shall be within 30 days of the filing of the motion and allow or briefing in accordance with the Federal and Local Rules. Available motion dates will be posted on the Court's website at: www.ded.uscourts.gov.

(b) At the motion hearing, each side will he allocated twenty (20) minutes to argue and respond to questions from the Court.

(c) Upon filing of the Notice of Motion, a copy of said Notice shall be sent to Chambers by-email at: jjf_civil@ded.uscourts.gov

5. **Amendment of the Pleadings.** All motions to amend the pleadings shall he filed on or before December 21, 2007.

6. **Case Dispositive Motions.** Any case dispositive motions, pursuant to the Federal Rules of Civil Procedure, shall be served and filed with an opening brief on or before August 20, 2008. Briefing shall be pursuant to D. Del. LR 7.1.2. No case dispositive motion may be filed more than ten (10) days from the above date without leave of the Court. The Court will issue a separate Order regarding procedures for filing summary judgment motions.

7. **Markman.** A Markman Hearing will be held on January 30, 2008, at 10:00 a.m. Briefing on the claim construction issues shall be completed at least ten (10) business days prior to the hearing. The Court, after reviewing the briefing, will allocate time to the parties on the hearing date.

8. **Applications by Motion.**

(a) Any applications to the Court shall be by written motion filed with the Clerk of the Court in compliance with the Federal Rules of Civil Procedure and the Local Rules of Civil Practice for the United States District Court for the District of Delaware (Amended Effective January 1, 1995). Any non-dispositive motion shall contain the statement required by D. Del. LR 7.1.1 and be made in accordance with the Court's December 15, 2006 Order on Procedures for Filing Non-dispositive motions in Patent Cases. Parties may file stipulated and unopposed Orders with the clerk of the Court for the Court's review and signing. The Court will not consider applications and requests submitted by letter or in a form other than a motion.

(b) No facsimile transmissions will be accepted.

(c) No telephone calls shall be made to Chambers.

(d) Any party with a true emergency matter requiring the assistance of the Court shall e-mail Chambers at: jjf_civil@ded.uscourts.gov. The e-mail shall provide a short statement describing the emergency.

9. **Pretrial Conference and Trial.** A Pretrial Conference will be held on October 16, 2008 at 12:00 p.m. Trial shall commence on November 5, 2008.

August 3, 2007
Date

UNITED STATES DISTRICT JUDGE

Exhibit 8

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

VOITH PAPER GMBH & CO. KG, Plaintiff, v. JOHNSONFOILS, INC., Defendant.	:	C.A. No. 1:07-cv-00226-JJF

DEFENDANT, JOHNSONFOILS, INC.'S, INITIAL DISCLOSURES PURSUANT TO FED. R. CIV. P. 26(a)(1)

Pursuant to Rule 26(a)(1) of the Federal Rules of Civil Procedure and the Court's Scheduling Order, Defendant, JohnsonFoils, Inc. ("JohnsonFoils"), hereby submits its Initial Disclosures. JohnsonFoils reserves the right to supplement these disclosures if additional information becomes available in the future.

A. Persons Likely To Have Discoverable Information

At present, JohnsonFoils believes that at least the following individuals are likely to have discoverable information:

(1) **Jay Shands**
JohnsonFoils, Inc.
40 Progress Avenue
Springfield, MA 01104

Knowledgeable about the allegedly infringing rebuild.

(2) **Vaughn Wildfong**
JohnsonFoils, Inc.
40 Progress Avenue
Springfield, MA 01104

Knowledgeable about the allegedly infringing rebuild.

(3) **Douglas McPherson**
JohnsonFoils, Inc.
40 Progress Avenue
Springfield, MA 01104

Knowledgeable about the allegedly infringing rebuild.

(4) **Dieter Egelhof**
(Address unknown)

Named inventor of the Patents-in-Suit.

(5) **Werner Kade**
(Address unknown)

Named inventor of the Patents-in-Suit.

(6) **Albrecht Meinecke**
(Address unknown)

Named inventor of the Patents-in-Suit.

(7) **Wilhelm Wanke**
(Address unknown)

Named inventor of the Patents-in-Suit.

(8) **Hans-Jurgen Wulz**
(Address unknown)

Named inventor of the Patents-in-Suit.

(9) **Rudolf Bück**
(Address unknown)

Named inventor of the Patents-in-Suit.

JohnsonFoils further states that some of Plaintiff, Voith Paper GmbH & Co. KG's ("Voith"), current and former officers, directors, or employees, and third parties doing business with Voith, including but not limited to manufacturers, retailers, and patent prosecution counsel, who are currently unknown to JohnsonFoils, or not yet identified, may have information relevant to JohnsonFoils' claims or defenses in this matter.

JohnsonFoils reserves the right to identify additional individuals that are likely to have discoverable information later in discovery during this proceeding.

B. Documents And Things That JohnsonFoils May Use To Support Its Claims And Defenses

JohnsonFoils may use the following documents to support its claims in this action:

(1) U.S. Patent Nos. 5,718,805 and 5,972,168, their respective file histories, and any reexamination file history documents related to the Patents-in-Suit;

(2) Models, drawings, specifications, diagrams, sketches, etc. identifying the accused products; and

(3) The prior art documents cited in the Requests for Reexamination of the Patents-in-Suit.

JohnsonFoils reserves the right to supplement this disclosure in the future as additional information becomes available.

C. Computation Of Damages

JohnsonFoils has not made any computation of damages at this time. JohnsonFoils will seek all available remedies, including attorney's fees and costs for defending this action pursuant to 35 U.S.C. § 285, to the fullest extent available under law. JohnsonFoils reserves the right to supplement this disclosure in the future.

D. Insurance Agreements

JohnsonFoils has a policy and is pursuing coverage; however, it has not had confirmation of coverage as of the date of this response.

Respectfully submitted,

Dated: September 18, 2007

Anthony S. Volpe
Randolph J. Huis
Ryan W. O'Donnell
Volpe and Koenig, P.C.
United Plaza, Suite 1600
30 South 17th Street
Philadelphia, PA 19103
(215) 568-6400

George H. Seitz, III (DE #667)
Patricia Pyles McGonigle (DE #3126)
Kevin A. Guerke (DE#4096)
Seitz, Van Ogtrop & Green, P.A.
222 Delaware Avenue, Suite 1500
P.O. Box 68
Wilmington, DE 19899
(302) 888-7602

Attorneys for Defendant
JohnsonFoils, Inc.

CERTIFICATE OF SERVICE

I herby certify that a true and correct copy of Defendant, JohnsonFoils, Inc.'s, Initial Disclosures is being served via electronic mail and first class mail on the following persons:

Neil F. Greenblum, Esquire
Michael J. Fink, Esquire
Greenblum & Bernstein, P.L.C.
1950 Roland Clarke Place
Reston, Virginia 20191

Adam W. Poff, Esquire
Young, Conaway, Stargatt & Taylor
The Brandywine Building
1000 West Street, 17th Floor
P.O. Box 391
Wilmington, DE 19899-0391

Respectfully submitted,

Date: September 18, 2007

Anthony S. Volpe
Volpe and Koenig, P.C.
United Plaza, Suite 1600
30 South 17th Street
Philadelphia, PA 19103
(215) 568-6400

Attorneys for Defendant JohnsonFoils, Inc.

EXHIBIT 9

REDACTED IN ITS ENTIRETY

Exhibit 10

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

VOITH PAPER GMBH & CO. KG,	:	
	:	
	:	
Plaintiff,	:	
	:	C.A. No. 1:07-cv-00226-JJF
v.	:	
	:	
JOHNSONFOILS, INC.,	:	
	:	
Defendant.	:	

DEFENDANT, JOHNSONFOILS, INC.'S RESPONSES TO PLAINTIFF, VOITH PAPER GMBH & CO. KG'S FIRST REQUESTS FOR PRODUCTION OF DOCUMENTS

Defendant, JohnsonFoils, Inc. ("JohnsonFoils") submits its objections and responses to Plaintiff, Voith Paper GmbH & Co. KG's ("Voith") First Requests for Production of Documents ("Document Requests") as follows:

GENERAL OBJECTIONS

1. JohnsonFoils objects to Voith's Document Requests to the extent that its Instructions, Definitions, and Requests are overly broad, unduly burdensome, oppressive, premature, seek discovery of information exceeding the permissible scope of discovery, and purport to impose obligations beyond those required by the Fed. R. Civ. P. 34.

2. JohnsonFoils objects to Voith's Document Requests to the extent they seek information protected by the attorney-client privilege, the work product doctrine, or other privilege or immunity. JohnsonFoils does not waive any attorney-client privilege, protection for attorney work-product, or other privilege or

immunity, nor should any such waiver be inferred from the fact that JohnsonFoils responded or attempted to respond to Voith's Document Requests. Further, any inadvertent disclosure of such information shall not be deemed a waiver of the attorney-client privilege, the work product doctrine, or other privilege or immunity.

3. JohnsonFoils objects to Voith's Document Requests to the extent they seek information that is not relevant to the subject matter of the pending action and is not reasonably calculated to lead to the discovery of admissible evidence.

4. JohnsonFoils objects to Voith's Document Requests to the extent they require JohnsonFoils to produce voluminous quantities of documents and information and any such discovery request is unduly burdensome and harassing.

5. JohnsonFoils objects to Voith's Document Requests to the extent that its definition of "Defendant" refers to an entity other than JohnsonFoils.

6. JohnsonFoils objects to Voith's Document Requests to the extent that its definition of the term "Accused Products" is vague and unclear, and to the extent that any such definition refers to products that are irrelevant to the subject matter of the present suit.

7. In attempting to respond by gathering relevant and responsive information, JohnsonFoils interpreted Voith's Document Requests utilizing ordinary meanings of words and identified information that reasonably appears responsive. To the extent that the Voith's Document Requests purport to seek information other than as so interpreted, JohnsonFoils objects on the grounds that the Voith's Document Requests are vague, ambiguous and overbroad.

8. JohnsonFoils is continuing its investigation for information responsive to the Voith's Document Requests. The responses provided herein do not prejudice JohnsonFoils' right to introduce documents or information discovered or deemed responsive subsequent to the date of these responses. JohnsonFoils reserves the right to supplement its responses with information acquired through discovery or other means.

9. JohnsonFoils objects to Voith's Document Requests to the extent they request identification or production of JohnsonFoils' confidential, business information prior to entry of a protective order in this matter.

10. JohnsonFoils objects to Voith's Document Requests to the extent that they are not limited in time.

11. Any statements made herein regarding JohnsonFoils' intention to provide information or documents responsive to any given Document Request is not an indication of the existence of any additional responsive information or documents.

SPECIFIC OBJECTIONS AND RESPONSES

The following responses to Voith's Document Requests are made subject to and without waiver of the foregoing General Objections, which are incorporated into each response as though fully set forth therein. To the extent a particular General Objection is restated in a response, it is repeated to emphasize its particular application to that particular request and such inclusion is not to be construed as a waiver of any other General Objection.

REQUEST FOR PRODUCTION NO. 1:

All agreements and/or contracts relating to the sale, offer for sale, use, importation, or otherwise making available the Accused Products.

RESPONSE:

JonhsonFoils objects to this request as unbounded in time, overly broad, unduly burdensome, harassing, and not reasonably calculated to lead to the discovery of admissible evidence. JohnsonFoils objects to this request as the term "Accused Products" is vague and not sufficiently defined.

Subject to and without waiver of the foregoing objections, JonhsonFoils will produce relevant, non-privileged documents related to the products identified in its response to Interrogatory No. 1 and to the extent that such documents exist and can be found after a reasonable search and inspection of the documents in JonhsonFoils' custody and control.

REQUEST FOR PRODUCTION NO. 2:

All Documents relating to or referring to any agreements and/or contracts relating to the sale, offer for sale, use importation, or otherwise making available the Accused Products.

RESPONSE:

JonhsonFoils objects to this request as unbounded in time, overly broad, unduly burdensome, harassing, and not reasonably calculated to lead to the discovery of admissible evidence. JohnsonFoils objects to this request as the term "Accused Products" is vague and not sufficiently defined. JohnsonFoils further objects to this request to the extent it is duplicative or Document Request No. 1.

Subject to and without waiver of the foregoing objections, JonhsonFoils will produce relevant, non-privileged documents related to the products identified in its response to Interrogatory No. 1 and to the extent that such documents exist and can be found after a reasonable search and inspection of the documents in JonhsonFoils' custody and control.

REQUEST FOR PRODUCTION NO. 3:

All Documents (whether in paper or electronic format) referring or relating to, evidencing, showing in particular, but not limited to, the structure, function, or operation of any version of the Accused Products, including but not limited to patent applications, notes, correspondence, memoranda, reports, evaluations, surveys, studys, presentations, technical lectures, talks, prototypes, samples, advertisements, marketing materials, contracts and agreements such as, without limitation, those relating to venture capital, user guides, product literature, preparatory works, drawings, development documentation, product documentation, and maintenance documentation, referring or relating to, evidencing, showing the structure, function, or operation of any version of the Accused Products.

RESPONSE:

JonhsonFoils objects to this request as unbounded in time, overly broad, unduly burdensome, harassing, and not reasonably calculated to lead to the discovery of admissible evidence. JohnsonFoils also objects to this request to the extent that it requests information protected by the attorney-client privilege or the work-product doctrine. JohnsonFoils objects to this request as the term "Accused Products" is vague and not sufficiently defined.

Subject to and without waiver of the foregoing objections, JonhsonFoils will produce relevant, non-privileged documents related to the products identified in its response to Interrogatory No. 1 and to the extent that such documents exist and can be found after a reasonable search and inspection of the documents in JonhsonFoils' custody and control.

REQUEST FOR PRODUCTION NO. 4:

All Documents relating to internal and/or external complaints, problems, comments, evaluations, survey, analysis, studies or reports regarding the Accused Products.

RESPONSE:

JonhsonFoils objects to this Request to the extent that it seeks documents that come within the scope of attorney-client or attorney work-product immunity, or that are otherwise exempted from discovery.

Subject to and without waiver of the foregoing objections, JonhsonFoils will produce relevant, non-privileged documents related to the products identified in its response to Interrogatory No. 1 and to the extent that such documents exist and can be found after a reasonable search and inspection of the documents in JonhsonFoils' custody and control.

REQUEST FOR PRODUCTION NO. 5:

All Documents describing, referring or relating to in whole or in part to differences, similarities and/or comparisons between the Accused Product, and either or both of the Patents-in-suit and/or Plaintiffs product(s).

RESPONSE:

JonhsonFoils objects to this request as unbounded in time, overly broad, unduly burdensome, harassing, and not reasonably calculated to lead to the discovery of admissible evidence. JohnsonFoils also objects to this request to the extent that it requests information protected by the attorney-client privilege or the work-product doctrine. JohnsonFoils objects to this request as the terms "Accused Products" and "Plaintiffs product(s)" are vague and not sufficiently defined.

JohnsonFoils further objects to this request to the extent it is duplicative or Document Request No. 3.

Subject to and without waiver of the foregoing objections, JonhsonFoils will produce relevant, non-privileged documents related to the products identified in its response to Interrogatory No. 1 and to the extent that such documents exist and can be found after a reasonable search and inspection of the documents in JonhsonFoils' custody and control.

REQUEST FOR PRODUCTION NO. 6:

All Documents, things, and material relating to the design and/or development of all versions of the Accused Products or part thereof, and all Documents, things, and material sufficient to identify all Persons who participated in such design and/or development.

RESPONSE:

JonhsonFoils objects to this request as unbounded in time, overly broad, unduly burdensome, harassing, and not reasonably calculated to lead to the discovery of admissible evidence. JohnsonFoils objects to this request as the term "Accused Products" is vague and not sufficiently defined. JohnsonFoils further objects to this request to the extent it is duplicative or Document Request Nos. 3.

Subject to and without waiver of the foregoing objections, JonhsonFoils will produce relevant, non-privileged documents related to the products identified in its response to Interrogatory No. 1 and to the extent that such documents exist and can be found after a reasonable search and inspection of the documents in JonhsonFoils' custody and control.

(Voith's Document Requests Do Not Include Request Nos. 7 and 8).

REQUEST FOR PRODUCTION NO. 9:

All Documents, searches, studies, opinions, or evaluations made in connection with either or both of the Patents-in-suit, and all documents referring or relating to such searches, studies, opinions, or evaluations including but not limited to issues of novelty, patentability, validity, enforceability, or enforceable scope of either or both of the Patents-in-suit.

RESPONSE:

JonhsonFoils objects to this request as harassing and not reasonably calculated to lead to the discovery of admissible evidence. JohnsonFoils also objects to this request to the extent that it requests information protected by the attorney-client privilege or the work-product doctrine.

REQUEST FOR PRODUCTION NO. 10:

All Documents concerning the data and/or other information created, viewed or considered by any expert preparing a report or affidavit on behalf of Defendant, in forming his or her opinion.

RESPONSE:

JonhsonFoils objects to this request as premature, overly broad, unduly burdensome, harassing, and not reasonably calculated to lead to the discovery of admissible evidence. JohnsonFoils also objects to this request to the extent that it requests information protected by the attorney-client privilege or the work-product doctrine. JohnsonFoils further objects to this request as it is not limited to documents viewed by experts regarding the subject matter of this litigation.

Subject to and without waiver of the foregoing objections, JonhsonFoils will produce relevant, non-privileged documents related to the products identified in its response to Interrogatory No. 1 and to the extent that such documents exist and can be found after a reasonable search and inspection of the documents in JonhsonFoils' custody and control.

REQUEST FOR PRODUCTION NO. 11:

All Documents and things referring to or relating to specifications of any Accused Product, including but not limited to marketing requirements, design requirements, functional specifications, detailed design descriptions, test plans, and any other technical or marketing requirements.

RESPONSE:

JonhsonFoils objects to this request as unbounded in time, overly broad, unduly burdensome, harassing, and not reasonably calculated to lead to the discovery of admissible evidence. JohnsonFoils also objects to this request to the extent that it requests information protected by the attorney-client privilege or the work-product doctrine. JohnsonFoils objects to this request as the term "Accused Products" is vague and not sufficiently defined.

Subject to and without waiver of the foregoing objections, JonhsonFoils will produce relevant, non-privileged documents related to the products identified in its response to Interrogatory No. 1 and to the extent that such documents exist and can be found after a reasonable search and inspection of the documents in JonhsonFoils' custody and control.

REQUEST FOR PRODUCTION NO. 12:

All Documents and things referring to or relating to market or technical research, any studies, patent searches, and/or prior art searches undertaken by the Defendant, or done on Defendant's behalf, including but not limited to materials and information gathered about either or both of the Patents-in-suit or Plaintiffs product(s).

RESPONSE:

JonhsonFoils objects to this request as unbounded in time, overly broad, unduly burdensome, harassing, and not reasonably calculated to lead to the discovery of admissible evidence. JohnsonFoils also objects to this request to the extent that it requests information protected by the attorney-client privilege or the work-product doctrine. JohnsonFoils objects to this request as the term "Plaintiff's product(s)" is vague and not sufficiently defined.

Subject to and without waiver of the foregoing objections, JonhsonFoils will produce relevant, non-privileged documents to the extent that such documents exist and can be found after a reasonable search and inspection of the documents in JonhsonFoils' custody and control.

REQUEST FOR PRODUCTION NO. 13 :

All Documents referring to or relating to Defendant first becoming aware of either or both of the Patents-in-suit.

RESPONSE:

JonhsonFoils objects to this request to the extent that it requests information protected by the attorney-client privilege or the work-product doctrine. JohnsonFoils further objects that such an inquiry is not relevant under the current state of the law and the burden rest with Voith to establish marking or notice to JohnsFoils.

REQUEST FOR PRODUCTION NO. 14:

All Documents and things referring to or relating to Defendant's marketing plans, goals and strategies with respect to the Accused Products.

RESPONSE:

JonhsonFoils objects to this request as unbounded in time, overly broad, unduly burdensome, harassing, and not reasonably calculated to lead to the discovery of admissible evidence. JohnsonFoils objects to this request as the term

"Accused Products" is vague and not sufficiently defined. JohnsonFoils further objects to this request to the extent it is duplicative or Document Request Nos. 3, 11, and 12.

Subject to and without waiver of the foregoing objections, JonhsonFoils will produce relevant, non-privileged documents related to the products identified in its response to Interrogatory No. 1 and to the extent that such documents exist and can be found after a reasonable search and inspection of the documents in JonhsonFoils' custody and control.

REQUEST FOR PRODUCTION NO. 15:

All Documents and things referring to or relating to Defendant's marketing of the Accused Products, including but not limited to all promotions, demonstrations, presentations, promotional materials and/or offers for sale, licensing and otherwise making the Accused Products available.

RESPONSE:

JonhsonFoils objects to this request as unbounded in time, overly broad, unduly burdensome, harassing, and not reasonably calculated to lead to the discovery of admissible evidence. JohnsonFoils objects to this request as the term "Accused Products" is vague and not sufficiently defined. JohnsonFoils further objects to this request to the extent it is duplicative or Document Request Nos. 3, 11, 12, and 14.

Subject to and without waiver of the foregoing objections, JonhsonFoils will produce relevant, non-privileged documents related to the products identified in its response to Interrogatory No. 1 and to the extent that such documents exist and can be found after a reasonable search and inspection of the documents in JonhsonFoils' custody and control.

REQUEST FOR PRODUCTION NO. 16:

All Documents which refer to or reference Plaintiff and/or Plaintiffs products.

RESPONSE:

JonhsonFoils objects to this request as unbounded in time, overly broad, unduly burdensome, harassing, and not reasonably calculated to lead to the discovery of admissible evidence. JohnsonFoils objects to this request to the extent that it requests information protected by the attorney-client privilege or the work-product doctrine. JohnsonFoils objects to this request as the term "Plaintiffs products" is vague and not sufficiently defined. JohnsonFoils further objects to this request to the extent it is duplicative or Document Request Nos. 5, 9, and 12.

Subject to and without waiver of the foregoing objections, JonhsonFoils will produce relevant, non-privileged documents to the extent that such documents exist and can be found after a reasonable search and inspection of the documents in JonhsonFoils' custody and control.

REQUEST FOR PRODUCTION NO. 17:

All Documents and things referring to or relating the Defendant selling, importing, licensing or otherwise making available the Accused Products, including but not limited to any and all proposals, orders, contracts, agreements, and/or invoices.

RESPONSE:

JonhsonFoils objects to this request as unbounded in time, overly broad, unduly burdensome, harassing, and not reasonably calculated to lead to the discovery of admissible evidence. JohnsonFoils objects to this request as the term "Accused Products" is vague and not sufficiently defined. JohnsonFoils further objects to this request to the extent it is duplicative or Document Request Nos. 1 or 2.

Subject to and without waiver of the foregoing objections, JonhsonFoils will produce relevant, non-privileged documents related to the products identified in its response to Interrogatory No. 1 and to the extent that such documents exist and can be found after a reasonable search and inspection of the documents in JonhsonFoils' custody and control.

REQUEST FOR PRODUCTION NO. 18:

All Documents and things illustrating, referring to or relating to Defendant's prices associated with the Accused Products.

RESPONSE:

JonhsonFoils objects to this request as unbounded in time, overly broad, unduly burdensome, harassing, and not reasonably calculated to lead to the discovery of admissible evidence. JohnsonFoils objects to this request as the term "Accused Products" is vague and not sufficiently defined. JohnsonFoils further objects to this request to the extent it is duplicative or Document Request Nos. 1, 2, or 18.

Subject to and without waiver of the foregoing objections, JonhsonFoils will produce relevant, non-privileged documents related to the products identified in its response to Interrogatory No. 1 and to the extent that such documents exist and can be found after a reasonable search and inspection of the documents in JonhsonFoils' custody and control.

REQUEST FOR PRODUCTION NO. 19:

All Documents that refer or relate to any sales and/or contracts concerning the Accused Products, including but not limited to communications with potential and/or actual customers.

RESPONSE:

JonhsonFoils objects to this request as unbounded in time, overly broad, unduly burdensome, harassing, and not reasonably calculated to lead to the discovery of admissible evidence. JohnsonFoils objects to this request as the term "Accused Products" is vague and not sufficiently defined. JohnsonFoils further objects to this request to the extent it is duplicative or Document Request Nos. 1, 2, 18, or 19.

Subject to and without waiver of the foregoing objections, JonhsonFoils will produce relevant, non-privileged documents related to the products identified in its response to Interrogatory No. 1 and to the extent that such documents exist and can be found after a reasonable search and inspection of the documents in JonhsonFoils' custody and control.

REQUEST FOR PRODUCTION NO. 20:

All agreements entered into by the Defendant referring to or relating to installation, maintenance, service and/or warranty of any of the Accused Products.

RESPONSE:

JonhsonFoils objects to this request as unbounded in time, overly broad, unduly burdensome, harassing, and not reasonably calculated to lead to the discovery of admissible evidence. JohnsonFoils objects to this request as the term "Accused Products" is vague and not sufficiently defined. JohnsonFoils further objects to this request to the extent it is duplicative or Document Request Nos. 1, 2, or 19.

Subject to and without waiver of the foregoing objections, JonhsonFoils will produce relevant, non-privileged documents related to the products identified in its response to Interrogatory No. 1 and to the extent that such documents exist and can be found after a reasonable search and inspection of the documents in JonhsonFoils' custody and control.

REQUEST FOR PRODUCTION NO. 21:

All Documents and things referring to or relating to the respective gross and/or net profit, sales, costs and/or expenses realized on and/or in relation to the selling, leasing, licensing, and/or otherwise commercializing the Accused Products, and a breakdown of such income by Accused Product, on a yearly basis, for every year, from 2001 to present.

RESPONSE:

JonhsonFoils objects to this request as overly broad, unduly burdensome, harassing, and not reasonably calculated to lead to the discovery of admissible evidence. JohnsonFoils objects to this request as the term "Accused Products" is vague and not sufficiently defined. JohnsonFoils further objects to this request to the extent it is duplicative or Document Request Nos. 1, 2, 18, or 19.

Subject to and without waiver of the foregoing objections, JonhsonFoils will produce relevant, non-privileged documents related to the products identified in its response to Interrogatory No. 1 and to the extent that such documents exist and can be found after a reasonable search and inspection of the documents in JonhsonFoils' custody and control.

(Voith's Document Requests Do Not Include Request No. 22)

REQUEST FOR PRODUCTION NO. 23:

All Documents generated by or on behalf of Defendant or any third party referring to or relating to the Plaintiff and/or Plaintiffs products, including but not limited to communications between Defendant and any third party, press releases, news articles, abstracts, conference papers, advertisements and/or promotional materials.

RESPONSE:

JonhsonFoils objects to this request as unbounded in time, overly broad, unduly burdensome, harassing, and not reasonably calculated to lead to the discovery of admissible evidence. JohnsonFoils objects to this request to the extent that it requests information protected by the attorney-client privilege or the work-product doctrine. JohnsonFoils objects to this request as the term "Plaintiffs products" is vague and not sufficiently defined. JohnsonFoils further objects to this request to the extent it is duplicative or Document Request Nos. 5, 9, 12, or 16.

Subject to and without waiver of the foregoing objections, JonhsonFoils will produce relevant, non-privileged documents to the extent that such documents exist and can be found after a reasonable search and inspection of the documents in JonhsonFoils' custody and control.

REQUEST FOR PRODUCTION NO. 24:

All Documents and things which concern, analyze, refer and/or relate to any of the Accused Products, whether internal or external communications, to or from Defendant, including but not limited to communications between and among the respective board members, officers, employees, staff members, attorneys, agents or representatives.

RESPONSE:

JonhsonFoils objects to this request as unbounded in time, overly broad, unduly burdensome, harassing, and not reasonably calculated to lead to the discovery of admissible evidence. JohnsonFoils also objects to this request to the extent that it requests information protected by the attorney-client privilege or the work-product doctrine. JohnsonFoils objects to this request as the term "Accused Products" is vague and not sufficiently defined.

Subject to and without waiver of the foregoing objections, JonhsonFoils will produce relevant, non-privileged documents related to the products identified in its response to Interrogatory No. 1 and to the extent that such documents exist and can be found after a reasonable search and inspection of the documents in JonhsonFoils' custody and control.

REQUEST FOR PRODUCTION NO. 25:

All Documents and things illustrating, referring to or relating to the past and present structure and organization of Defendant, including but not limited to organizational charts, incorporation documents and office location(s), any transfer of assets (such as technology, intellectual property rights), or change of corporate name.

RESPONSE:

JonhsonFoils objects to this request as unbounded in time, overly broad, and unduly burdensome.

Subject to and without waiver of the foregoing objections, JonhsonFoils will produce relevant, non-privileged documents related to the products identified in its response to Interrogatory No. 1 and to the extent that such documents exist and concern the organizational structure(s) or location(s) of JohnsonFoils during the relevant time period.

REQUEST FOR PRODUCTION NO. 26:

All Documents concerning or in relation to Defendant's document retention, custody, and/or destruction policy(ies) from 2001 to present.

RESPONSE:

JonhsonFoils objects to this request as not reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiver of the foregoing objections, JonhsonFoils will produce relevant, non-privileged documents to the extent that such documents exist and can be found after a reasonable search and inspection of the documents in JonhsonFoils' custody and control.

REQUEST FOR PRODUCTION NO. 27:

All Prior Art on which Defendant relies or intends to rely to support claims of invalidity of any of the Patents-in-suit, including but not limited to all Prior Art cited in any opinions and studies regarding the either or both of the Patents-in-suit.

RESPONSE:

JohnsonFoils objects to this request as premature and to the extent that it requests information protected by the attorney-client privilege or the work-product doctrine.

Subject to and without waiver of the foregoing objections, JonhsonFoils will produce relevant, non-privileged documents to the extent that such documents exist and can be found after a reasonable search and inspection of the documents in JonhsonFoils' custody and control.

REQUEST FOR PRODUCTION NO. 28:

All Documents that refer to, relate to, support or refute Defendant's contentions and belief that it has not infringed and is not infringing the Patents-in-suit.

RESPONSE:

JohnsonFoils objects to this request as premature and to the extent that it requests information protected by the attorney-client privilege or the work-product doctrine.

Subject to and without waiver of the foregoing objections, JonhsonFoils will produce relevant, non-privileged documents to the extent that such documents exist and can be found after a reasonable search and inspection of the documents in JonhsonFoils' custody and control. JohnsonFoils also refers Voith to the reexaminations of the Patents-in-Suit filed by JohnsonFoils on August 24, 2007.

REQUEST FOR PRODUCTION NO. 29:

All Documents that refer to, relate to, support or refute Defendant's contentions and belief that it has not contributed to infringement and has not induced others to infringe, and is not now contributing to infringement nor inducing others to infringe, either or both of the Patents-in-suit.

RESPONSE:

JohnsonFoils objects to this request as premature and to the extent that it requests information protected by the attorney-client privilege or the work-product doctrine.

Subject to and without waiver of the foregoing objections, JonhsonFoils will produce relevant, non-privileged documents to the extent that such documents exist and can be found after a reasonable search and inspection of the documents in JonhsonFoils' custody and control. JohnsonFoils also refers Voith to the reexaminations of the Patents-in-Suit filed by JohnsonFoils on August 24, 2007.

REQUEST FOR PRODUCTION NO. 30:

To the extent not produced in response to another Request For Production, all Documents which support any defense asserted by Defendants.

RESPONSE:

JohnsonFoils objects to this request as premature and to the extent that it requests information protected by the attorney-client privilege or the work-product doctrine.

Subject to and without waiver of the foregoing objections, JonhsonFoils will produce relevant, non-privileged documents to the extent that such documents exist and can be found after a reasonable search and inspection of the documents in JonhsonFoils' custody and control.

REQUEST FOR PRODUCTION NO. 31:

All Documents on which Defendant intends to rely at trial or hearing within this litigation.

RESPONSE:

JohnsonFoils objects to this request as premature.

Subject to and without waiver of the foregoing objections, JonhsonFoils will produce relevant, non-privileged documents at the appropriate time.

REQUEST FOR PRODUCTION NO. 32:

All Documents passing between Defendant and any person that Defendant may call as a witness at trial or hearing within this litigation.

RESPONSE:

JohnsonFoils objects to this request as premature and to the extent that it requests information protected by the attorney-client privilege or the work-product doctrine.

Subject to and without waiver of the foregoing objections, JonhsonFoils will produce relevant, non-privileged documents to the extent that such documents exist and can be found after a reasonable search and inspection of the documents in JonhsonFoils' custody and control.

REQUEST FOR PRODUCTION NO. 33:

All Documents and things required to be identified by Fed. R. Civ. P. 26(a)(1).

RESPONSE:

JohnsonFoils objects to this request as premature and to the extent that it requests information protected by the attorney-client privilege or the work-product doctrine.

Subject to and without waiver of the foregoing objections, JonhsonFoils will produce relevant, non-privileged documents that can be found after a reasonable search and inspection of the documents in JonhsonFoils' custody and control at the appropriate time.

REQUEST FOR PRODUCTION NO. 34:

All Documents, things, and materials requested to be identified in Plaintiffs First Set of Interrogatories served concurrently herewith.

RESPONSE:

JohnsonFoils incorporates all applicable objections set forth in its Responses to Voith's First Set of Interrogatories. JohnsonFoils also objects to this request as overly broad and unduly burdensome.

Subject to and without waiver of the foregoing objections, JonhsonFoils will produce relevant, non-privileged documents to the extent that such documents exist and can be found after a reasonable search and inspection of the documents in JonhsonFoils' custody and control.

REQUEST FOR PRODUCTION NO. 35:

All Documents, things, and materials identified and/or containing information used in preparing Defendant's responses to Plaintiffs First Set of Interrogatories served concurrently herewith.

RESPONSE:

JohnsonFoils objects to this request as premature and to the extent that it requests information protected by the attorney-client privilege or the work-product doctrine.

Subject to and without waiver of the foregoing objections, JonhsonFoils will produce relevant, non-privileged documents to the extent that such documents exist and can be found after a reasonable search and inspection of the documents in JonhsonFoils' custody and control.

REQUEST FOR PRODUCTION NO. 36:

All Documents and things relating to any attempts to design around any claim(s) of either or both of the Patents-in-suit.

RESPONSE:

JonhsonFoils objects to this request as not reasonably calculated to lead to the discovery of admissible evidence. JohnsonFoils further objects to this request to the extent that it requests information protected by the attorney-client privilege or the work-product doctrine.

Subject to and without waiver of the foregoing objections, JonhsonFoils will produce relevant, non-privileged documents to the extent that such documents exist and can be found after a reasonable search and inspection of the documents in JonhsonFoils' custody and control.

Respectfully submitted,

Dated: August 28, 2007

Ryan W. O'Donnell

Anthony S. Volpe
Randolph J. Huis
Ryan W. O'Donnell
Volpe and Koenig, P.C.
United Plaza, Suite 1600
30 South 17th Street
Philadelphia, PA 19103
(215) 568-6400

George H. Seitz, III (DE #667)
Patricia Pyles McGonigle (DE #3126)
Kevin A. Guerke (DE#4096)
Seitz, Van Ogtrop & Green, P.A.
222 Delaware Avenue, Suite 1500
P.O. Box 68
Wilmington, DE 19899
(302) 888-7602

Attorneys for Defendant
JohnsonFoils, Inc.

CERTIFICATE OF SERVICE

I herby certify that a true and correct copy of Defendant, JohnsonFoils, Inc.'s, Responses to Plaintiff, Voith Paper GmbH & Co. KG's, First Requests for Production of Documents was served via electronic mail and first class mail on the following persons:

Neil F. Greenblum, Esquire
Michael J. Fink, Esquire
Greenblum & Bernstein, P.L.C.
1950 Roland Clarke Place
Reston, Virginia 20191

Adam W. Poff, Esquire
Young, Conaway, Stargatt & Taylor
The Brandywine Building
1000 West Street, 17th Floor
P.O. Box 391
Wilmington, DE 19899-0391

Respectfully submitted,

Date: August 28, 2007

Ryan W. O'Donnell
Ryan W. O'Donnell
Volpe and Koenig, P.C.
United Plaza, Suite 1600
30 South 17th Street
Philadelphia, PA 19103
(215) 568-6400

Attorneys for Defendant JohnsonFoils, Inc.

EXHIBIT 11

REDACTED IN ITS ENTIRETY

Exhibit 12

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

VOITH PAPER GMBH & CO. KG, Plaintiff, v. JOHNSONFOILS, INC., Defendant.	:	C.A. No. 1:07-cv-00226-JJF

DEFENDANT, JOHNSONFOILS, INC.'S RESPONSES TO PLAINTIFF, VOITH PAPER GMBH & CO. KG'S SECOND REQUESTS FOR PRODUCTION OF DOCUMENTS

Defendant, JohnsonFoils, Inc. ("JohnsonFoils") submits its objections and responses to Plaintiff, Voith Paper GmbH & Co. KG's ("Voith") Second Requests for Production of Documents ("Document Requests") as follows:

GENERAL OBJECTIONS

1. JohnsonFoils objects to Voith's Document Requests to the extent that its Instructions, Definitions, and Requests are overly broad, unduly burdensome, oppressive, premature, seek discovery of information exceeding the permissible scope of discovery, and purport to impose obligations beyond those required by the Fed. R. Civ. P. 34.

2. JohnsonFoils objects to Voith's Document Requests to the extent they seek information protected by the attorney-client privilege, the work product doctrine, or other privilege or immunity. JohnsonFoils does not waive any attorney-client privilege, protection for attorney work-product, or other privilege or

immunity, nor should any such waiver be inferred from the fact that JohnsonFoils responded or attempted to respond to Voith's Document Requests. Further, any inadvertent disclosure of such information shall not be deemed a waiver of the attorney-client privilege, the work product doctrine, or other privilege or immunity.

3. JohnsonFoils objects to Voith's Document Requests to the extent they seek information that is not relevant to the subject matter of the pending action and is not reasonably calculated to lead to the discovery of admissible evidence.

4. JohnsonFoils objects to Voith's Document Requests to the extent they require JohnsonFoils to produce voluminous quantities of documents and information and any such discovery request is unduly burdensome and harassing.

5. JohnsonFoils objects to Voith's Document Requests to the extent that its definition of "Defendant" refers to an entity other than JohnsonFoils.

6. JohnsonFoils objects to Voith's Document Requests to the extent that its definition of the term "Accused Products" is vague and unclear, and to the extent that any such definition refers to products that are irrelevant to the subject matter of the present suit.

7. In attempting to respond by gathering relevant and responsive information, JohnsonFoils interpreted Voith's Document Requests utilizing ordinary meanings of words and identified information that reasonably appears responsive. To the extent that the Voith's Document Requests purport to seek information other than as so interpreted, JohnsonFoils objects on the grounds that the Voith's Document Requests are vague, ambiguous and overbroad.

8. JohnsonFoils is continuing its investigation for information responsive to the Voith's Document Requests. The responses provided herein do not prejudice JohnsonFoils' right to introduce documents or information discovered or deemed responsive subsequent to the date of these responses. JohnsonFoils reserves the right to supplement its responses with information acquired through discovery or other means.

9. JohnsonFoils objects to Voith's Document Requests to the extent they request identification or production of JohnsonFoils' confidential, business information prior to entry of a protective order in this matter.

10. JohnsonFoils objects to Voith's Document Requests to the extent that they are not limited in time.

11. Any statements made herein regarding JohnsonFoils' intention to provide information or documents responsive to any given Document Request is not an indication of the existence of any additional responsive information or documents.

SPECIFIC OBJECTIONS AND RESPONSES

The following responses to Voith's Document Requests are made subject to and without waiver of the foregoing General Objections, which are incorporated into each response as though fully set forth therein. To the extent a particular General Objection is restated in a response, it is repeated to emphasize its particular application to that particular request and such inclusion is not to be construed as a waiver of any other General Objection.

REQUEST FOR PRODUCTION NO. 37:

All Documents, including, but not limited to, agreements and/or contracts relating to the sale, offer for sale, use, importation, or otherwise making available any paper forming machine which is being modified, is planned to be modified, or is offered to be modified to include at least one resiliently mounted blade.

Response: JohnsonFoils objects to this request as unbounded in time, overly broad, unduly burdensome, vague, ambiguous, harassing, and not reasonably calculated to lead to the discovery of admissible evidence. JohnsonFoils further objects to the extent it is duplicative of Plaintiff's Request for Production Nos. 1 and 2.

Subject to and without waiver of the foregoing objections, JohnsonFoils will produce relevant, non-privileged documents related to the products identified in its response to Interrogatory No. 1 and to the extent that such documents exist and can be found after a reasonable search and inspection of the documents in JohnsonFoils' custody and control.

REQUEST FOR PRODUCTION NO. 38:

All Documents describing, referring or relating to in whole or in part to differences, similarities and/or comparisons between any paper forming machine which is being modified, is planned to be modified, or is offered to be modified to include with at least one resiliently mounted blade and either or both of the Patents-in-Suit and/or Plaintiffs product(s).

Response: JohnsonFoils objects to this request as unbounded in time, overly broad, unduly burdensome, vague, ambiguous, harassing, and not reasonably calculated to lead to the discovery of admissible evidence. JohnsonFoils also objects to this request to the extent that it requests information protected by the attorney-client privilege or the work-product doctrine. JohnsonFoils further objects to this request to the extent it is duplicative of Plaintiff's Request for Production Nos. 3 and 5.

Subject to and without waiver of the foregoing objections, JohnsonFoils will produce relevant, non-privileged documents related to the products identified in its response to Interrogatory No. 1 and to the extent that such documents exist and can be found after a reasonable search and inspection of the documents in JohnsonFoils' custody and control.

REQUEST FOR PRODUCTION NO. 39:

All Documents, things, and material relating to the design and/or development of all versions of any paper forming machine which is being modified, is planned to be modified, or is offered to be modified to include at least one resiliently mounted blade, or part of such paper forming machine thereof, and all Documents, things, and material sufficient to identify all Persons who participated in such design and/or development.

Response: JohnsonFoils objects to this request as unbounded in time, overly broad, unduly burdensome, vague, ambiguous, harassing, and not reasonably calculated to lead to the discovery of admissible evidence. JohnsonFoils further objects to this request to the extent it is duplicative of Plaintiff's Request for Production Nos. 3 and 6.

Subject to and without waiver of the foregoing objections, JohnsonFoils will produce relevant, non-privileged documents related to the products identified in its response to Interrogatory No. 1 and to the extent that such documents exist and can be found after a reasonable search and inspection of the documents in JohnsonFoils' custody and control.

REQUEST FOR PRODUCTION NO. 40:

All Documents and things referring to or relating to specifications of any paper forming machine which is being modified, is planned to be modified, or is offered to be modified to include at least one resiliently mounted blade, including but not limited to marketing requirements, design requirements, functional specifications, detailed design descriptions, test plans, and any other technical or marketing requirements.

Response: JohnsonFoils objects to this request as unbounded in time, overly broad, unduly burdensome, vague, ambiguous, harassing, and not reasonably calculated to lead to the discovery of admissible evidence. JohnsonFoils objects to this request to the extent that it seeks documents that come within the scope of attorney-client or attorney work-product immunity, or that are otherwise exempted from discovery. JohnsonFoils further objects to this request to the extent it is duplicative of Plaintiff's Request for Production Nos. 11 and 39.

Subject to and without waiver of the foregoing objections, JohnsonFoils will produce relevant, non-privileged documents related to the products identified in its response to Interrogatory No. 1 and to the extent that such documents exist and can be found after a reasonable search and inspection of the documents in JohnsonFoils' custody and control.

REQUEST FOR PRODUCTION NO. 41:

All Documents and things referring to or relating to Defendant's marketing plans, goals, and/or strategies with respect to any paper forming machine having at least one resiliently mounted blade.

Response: JohnsonFoils objects to this request as unbounded in time, overly broad, unduly burdensome, vague, ambiguous, harassing, and not reasonably calculated to lead to the discovery of admissible evidence. JohnsonFoils further objects to this request to the extent it is duplicative of Plaintiff's Request for Production Nos. 3, 11, 12, and 14.

Subject to and without waiver of the foregoing objections, JohnsonFoils will produce relevant, non-privileged documents related to the products identified in its response to Interrogatory No. 1 and to the extent that such documents exist and can be found after a reasonable search and inspection of the documents in JohnsonFoils' custody and control.

REQUEST FOR PRODUCTION NO. 42:

All Documents and things referring to or relating to Defendant's marketing of any paper forming machine having at least one resiliently mounted blade, including but not limited to all promotions, demonstrations, presentations, promotional materials and/or offers for sale, licensing and otherwise making such a paper forming machine available.

Response: JohnsonFoils objects to this request as unbounded in time, overly broad, unduly burdensome, vague, ambiguous, harassing, and not reasonably calculated to lead to the discovery of admissible evidence. JohnsonFoils further objects to this request to the extent it is duplicative of Plaintiff's Request for Production Nos. 3, 11, 12, 14, 15, and 41.

Subject to and without waiver of the foregoing objections, JohnsonFoils will produce relevant, non-privileged documents related to the products identified in its response to Interrogatory No. 1 and to the extent that such documents exist and can be found after a reasonable search and inspection of the documents in JohnsonFoils' custody and control.

REQUEST FOR PRODUCTION NO. 43:

All Documents and things referring to or relating the Defendant selling, importing, licensing or otherwise making available a paper forming machine with at least one resiliently mounted blade, including but not limited to any and all proposals, orders, contracts, agreements, and/or invoices.

Response: JohnsonFoils objects to this request as unbounded in time, overly broad, unduly burdensome, vague, ambiguous, harassing, and not reasonably calculated to lead to the discovery of admissible evidence. JohnsonFoils further objects to this request to the extent it is duplicative of Plaintiff's Request for Production Nos. 1, 2, 17, 37, and 42.

Subject to and without waiver of the foregoing objections, JohnsonFoils will produce relevant, non-privileged documents related to the products identified in its response to Interrogatory No. 1 and to the extent that such documents exist and can be found after a reasonable search and inspection of the documents in JohnsonFoils' custody and control.

REQUEST FOR PRODUCTION NO. 44:

All Documents and things illustrating, referring to or relating to Defendant's prices associated with any paper forming machine with at least one resiliently mounted blade.

Response: JohnsonFoils objects to this request as unbounded in time, overly broad, vague, ambiguous, unduly burdensome, harassing, and not reasonably calculated to lead to the discovery of admissible evidence. JohnsonFoils further objects to this request to the extent it is duplicative of Plaintiff's Request for Production Nos. 1, 2, 17, 18, 37, 42, and 43.

Subject to and without waiver of the foregoing objections, JohnsonFoils will produce relevant, non-privileged documents related to the products identified in its response to Interrogatory No. 1 and to the extent that such documents exist and can be found after a reasonable search and inspection of the documents in JohnsonFoils' custody and control.

REQUEST FOR PRODUCTION NO.45:

All Documents that refer or relate to any sales and/or contracts concerning paper forming machines having at least one resiliently mounted blade, including but not limited to communications with potential and/or actual customers.

Response: JohnsonFoils objects to this request as unbounded in time, overly broad, vague, ambiguous, unduly burdensome, harassing, and not reasonably calculated to lead to the discovery of admissible evidence. JohnsonFoils further objects to this request to the extent it is duplicative of Plaintiff's Request for Production Nos. 1, 2, 17, 18, 19, 37, 42, 43, 44.

Subject to and without waiver of the foregoing objections, JohnsonFoils will produce relevant, non-privileged documents related to the products identified in its response to Interrogatory No. 1 and to the extent that such documents exist and can be found after a reasonable search and inspection of the documents in JohnsonFoils' custody and control.

REQUEST FOR PRODUCTION NO. 46:

All Documents and things which concern, analyze, refer and/or relate to any paper forming machine having at least one resiliently mounted blade, whether internal or external communications, to or from Defendant, including but not limited to communications between and among the respective board members, officers, employees, staff members, attorneys, agents or representatives.

Response: JohnsonFoils objects to this request as unbounded in time, overly broad, unduly burdensome, vague, ambiguous, harassing, and not reasonably calculated to lead to the discovery of admissible evidence. JohnsonFoils also objects to this request to the extent that it requests information protected by the attorney-client privilege or the work-product doctrine. JohnsonFoils further objects to this request to the extent it is duplicative of Plaintiff's Request for Production No. 24.

Subject to and without waiver of the foregoing objections, JohnsonFoils will produce relevant, non-privileged documents related to the products identified in its response to Interrogatory No. 1 and to the extent that such documents exist and can be found after a reasonable search and inspection of the documents in JohnsonFoils' custody and control.

REQUEST FOR PRODUCTION NO. 47:

All Documents reviewed and/or relied upon by any person that Defendant may call as a witness at trial or any hearing in this litigation.

Response: JohnsonFoils objects to this request as overly broad, unduly burdensome, premature and to the extent that it requests information protected by the attorney-client privilege or the work-product doctrine. JohnsonFoils further objects to this request to the extent it is duplicative of Plaintiff's Request for Production No. 32.

Subject to and without waiver of the foregoing objections, JohnsonFoils will produce relevant, non-privileged documents to the extent that such documents exist and can be found after a reasonable search and inspection of the documents in JohnsonFoils' custody and control.

REQUEST FOR PRODUCTION NO. 48:

All Documents, things, and/or materials requested to be identified by any Plaintiff interrogatory.

Response: JohnsonFoils incorporates all applicable objections set forth in its Responses to the Plaintiff's First Set of Interrogatories. JohnsonFoils also objects to this request as overly broad and unduly burdensome. JohnsonFoils further objects to this request to the extent it is duplicative of Plaintiff's Request for Production Nos. 33 and 34.

Subject to and without waiver of the foregoing objections, JohnsonFoils will produce relevant, non-privileged documents to the extent that such documents exist and can be found after a reasonable search and inspection of the documents in JohnsonFoils' custody and control.

REQUEST FOR PRODUCTION NO. 49:

All Documents, things, and materials identified and/or containing information used in preparing Defendant's responses to any Plaintiff interrogatory.

Response: JohnsonFoils objects to this request as premature and to the extent that it requests information protected by the attorney-client privilege or the work-product doctrine. JohnsonFoils further objects to this request to the extent it is duplicative of Plaintiff's Request for Production Nos. 33, 34, 35, and 48.

Subject to and without waiver of the foregoing objections, JohnsonFoils will produce relevant, non-privileged documents to the extent that such documents exist and can be found after a reasonable search and inspection of the documents in JohnsonFoils' custody and control.

REQUEST FOR PRODUCTION NO. 50:

All documents and things relating to, supporting, or contradicting your claim that "JohnsonFoils has not infringed any claim of the Patents-in-Suit, either literally or under the doctrine of equivalents."

Response: JohnsonFoils objects to this request as premature and to the extent that it requests information protected by the attorney-client privilege or the work-product doctrine. JohnsonFoils further objects to this request to the extent it is duplicative of Plaintiff's Request for Production Nos. 28 and 29.

Subject to and without waiver of the foregoing objections, JohnsonFoils will produce relevant, non-privileged documents to the extent that such documents exist and can be found after a reasonable search and inspection of the documents in JohnsonFoils' custody and control. JohnsonFoils also refers Voith to the reexaminations of the Patents-in-Suit filed by JohnsonFoils on August 24, 2007.

REQUEST FOR PRODUCTION NO. 51:

All documents and things relating to, supporting, or contradicting your claim that "[e]ach of the Patents-in-Suit is invalid, unenforceable, and void for failure to comply with the provisions of 35 U.S.C. Section 101 et seq."

Response: JohnsonFoils objects to this request as premature and to the extent hat it requests information protected by the attorney-client privilege or the work-product doctrine. JohnsonFoils further objects to this request to the extent it is duplicative of Plaintiff's Request for Production No. 27 of the Plaintiff's First Set of Requests for Production.

Subject to and without waiver of the foregoing objections, JohnsonFoils will produce relevant, non-privileged documents to the extent that such documents exist and can be found after a reasonable search and inspection of the documents in JohnsonFoils' custody and control. JohnsonFoils also refers Voith to the reexaminations of the Patents-in-Suit filed by JohnsonFoils on August 24, 2007.

REQUEST FOR PRODUCTION NO. 52:

All documents and things relating to, supporting, or contradicting your claim that "Voith is barred by the doctrine of prosecution history estoppel from presenting a claim interpretation necessary to find infringement of any claim of the Patents-in-Suit."

Response: JohnsonFoils objects to this request as premature and to the extent that it requests information protected by the attorney-client privilege or the work-product doctrine. JohnsonFoils further objects to this request to the extent it is duplicative of Plaintiff's Request for Production Nos. 28, 29, and 50.

Subject to and without waiver of the foregoing objections, JohnsonFoils will produce relevant, non-privileged documents to the extent that such documents exist and can be found after a reasonable search and inspection of the documents in JohnsonFoils' custody and control. JohnsonFoils also refers Voith to the reexaminations of the Patents-in-Suit filed by JohnsonFoils on August 24, 2007.

REQUEST FOR PRODUCTION NO. 53:

All documents and things relating to, supporting, or contradicting your claim that "Voith has misused each of the Patents-in-Suit which renders each of them unenforceable, and Voith is precluded from obtaining any relief in this action due to its misuse."

Response: JohnsonFoils objects to this request as premature and to the extent that it requests information protected by the attorney-client privilege or the work-product doctrine.

Subject to and without waiver of the foregoing objections, JohnsonFoils will produce relevant, non-privileged documents to the extent that such documents exist and can be found after a reasonable search and inspection of the documents in JohnsonFoils' custody and control. JohnsonFoils also refers Voith to the reexaminations of the Patents-in-Suit filed by JohnsonFoils on August 24, 2007.

REQUEST FOR PRODUCTION NO. 54:

All documents and things relating to, supporting, or contradicting your claim that "Voith's claims are barred, in whole or in part, by the [doctrine of equitable estoppel, the doctrine of waiver, the statute of limitations, and the doctrine of laches]."

Response: JohnsonFoils objects to this request as premature and to the extent that it requests information protected by the attorney-client privilege or the work-product doctrine. JohnsonFoils further objects to this request to the extent it is duplicative of Plaintiff's Request for Production No. 30.

Subject to and without waiver of the foregoing objections, JohnsonFoils will produce relevant, non-privileged documents to the extent that such documents exist and can be found after a reasonable search and inspection of the documents in JohnsonFoils' custody and control.

REQUEST FOR PRODUCTION NO. 55:

All documents and things relating to, supporting, or contradicting your claim that "JohnsonFoils has not induced and is not inducing infringement of any claim of the Patents-in-Suit," and "JohnsonFoils has not in the past and is not now contributing to the infringement of any claim of the Patents-in-Suit."

Response: JohnsonFoils objects to this request as premature and to the extent that it requests information protected by the attorney-client privilege or the work-product doctrine. JohnsonFoils further objects to this request to the extent it is duplicative of Plaintiff's Request for Production Nos. 28, 29, and 50.

Subject to and without waiver of the foregoing objections, JohnsonFoils will produce relevant, non-privileged documents to the extent that such documents exist and can be found after a reasonable search and inspection of the documents in JohnsonFoils' custody and control. JohnsonFoils also refers Voith to the reexaminations of the Patents-in-Suit filed by JohnsonFoils on August 24, 2007.

REQUEST FOR PRODUCTION NO. 56:

All documents and things relating to, supporting, or contradicting your claim that "[a]ll claims of the Patents-in-Suit are invalid under 35 U.S.C. Section 102."

Response: JohnsonFoils objects to this request as premature and to the extent that it requests information protected by the attorney-client privilege or the work-product doctrine. JohnsonFoils further objects to this request to the extent it is duplicative of Plaintiff's Request for Production Nos. 27 and 51.

Subject to and without waiver of the foregoing objections, JohnsonFoils will produce relevant, non-privileged documents to the extent that such documents exist and can be found after a reasonable search and inspection of the documents in JohnsonFoils' custody and control. JohnsonFoils also refers Voith to the reexaminations of the Patents-in-Suit filed by JohnsonFoils on August 24, 2007.

REQUEST FOR PRODUCTION NO. 57:

All documents and things relating to, supporting, or contradicting your claim that "[a]ll claims of the Patents-in-Suit are invalid under 35 U.S.C. Section 103."

Response: JohnsonFoils objects to this request as premature and to the extent that it requests information protected by the attorney-client privilege or the work-product doctrine. JohnsonFoils further objects to this request to the extent it is duplicative of Plaintiff's Request for Production Nos. 27 and 51.

Subject to and without waiver of the foregoing objections, JohnsonFoils will produce relevant, non-privileged documents to the extent that such documents exist and can be found after a reasonable search and inspection of the documents in JohnsonFoils' custody and control. JohnsonFoils also refers Voith to the reexaminations of the Patents-in-Suit filed by JohnsonFoils on August 24, 2007.

REQUEST FOR PRODUCTION NO. 58:

All documents and things relating to, supporting, or contradicting your claim that "[a]ll claims of the Patents-in-Suit are invalid under 35 U.S.C. Section 112."

Response: JohnsonFoils objects to this request as premature and to the extent that it requests information protected by the attorney-client privilege or the work-product doctrine. JohnsonFoils further objects to this request to the extent it is duplicative of Plaintiff's Request for Production Nos. 27 and 51.

Subject to and without waiver of the foregoing objections, JohnsonFoils will produce relevant, non-privileged documents to the extent that such documents exist and can be found after a reasonable search and inspection of the documents in JohnsonFoils' custody and control.

REQUEST FOR PRODUCTION NO. 59:

All documents and things relating to, supporting, or contradicting your claim that "Voith knew or should have known that JohnsonFoils was not infringing any permissible, reasonable, or valid interpretation of any claim of the Patents-in-Suit" and that "Voith's . . . interpretations of the claims of the Patents-in-Suit are interposed for . . . anti-competitive effect."

Response: JohnsonFoils objects to this request as premature and to the extent that it requests information protected by the attorney-client privilege or the work-product doctrine. JohnsonFoils further objects to this request to the extent it is duplicative of Plaintiff's Request for Production Nos. 28 and 50.

Subject to and without waiver of the foregoing objections, JohnsonFoils will produce relevant, non-privileged documents to the extent that such documents exist and can be found after a reasonable search and inspection of the documents in JohnsonFoils' custody and control. JohnsonFoils also refers Voith to the reexaminations of the Patents-in-Suit filed by JohnsonFoils on August 24, 2007.

REQUEST FOR PRODUCTION NO. 60:

All documents and things relating to, supporting, or contradicting your claim that "Voith knew or should have known of existing prior art that was not before the United States Patent and Trademark Office during the prosecution of the applications leading to the Patents-in-Suit," "that existing prior art is such that Voith knew or should have known that the claims of the Patents-in-Suit were not patentable," "that existing prior art is such that Voith now knows or should have known that its interpretations of the claims of the Patents-in-Suit render them invalid," "Voith knowingly ignored the prior art so it could advance its . . . interpretations of the claims . . . for anti-competitive effects," and "Voith's assertion of. . . interpretations of the claims of the Patents-in-Suit is having an anti-competitive effect on JohnsonFoils."

Response: JohnsonFoils objects to this request as premature and to the extent that it requests information protected by the attorney-client privilege or the work-product doctrine.

Subject to and without waiver of the foregoing objections, JohnsonFoils will produce relevant, non-privileged documents to the extent that such documents exist and can be found after a reasonable search and inspection of the documents in JohnsonFoils' custody and control. JohnsonFoils also refers Voith to the reexaminations of the Patents-in-Suit filed by JohnsonFoils on August 24, 2007.

REQUEST FOR PRODUCTION NO. 61:

All documents and things relating to any communications between Defendant and others about this litigation.

Response: JohnsonFoils objects to this request as unbounded in time, overly broad, unduly burdensome, harassing, and not reasonably calculated to lead to the discovery of admissible evidence. JohnsonFoils further objects to this requests to the extent that it requests information protected by the attorney-client privilege or the work-product doctrine.

Subject to and without waiver of the foregoing objections, JohnsonFoils will produce relevant, non-privileged documents to the extent that such documents exist and can be found after a reasonable search and inspection of the documents in JohnsonFoils' custody and control. JohnsonFoils also refers Voith to the reexaminations of the Patents-in-Suit filed by JohnsonFoils on August 24, 2007.

Respectfully submitted,

Dated: September 18, 2007

Anthony S. Volpe

Anthony S. Volpe
Randolph J. Huis
Ryan W. O'Donnell
Volpe and Koenig, P.C.
United Plaza, Suite 1600
30 South 17th Street
Philadelphia, PA 19103
(215) 568-6400

George H. Seitz, III (DE #667)
Patricia Pyles McGonigle (DE #3126)
Kevin A. Guerke (DE#4096)
Seitz, Van Ogtrop & Green, P.A.
222 Delaware Avenue, Suite 1500
P.O. Box 68
Wilmington, DE 19899
(302) 888-7602

Attorneys for Defendant
JohnsonFoils, Inc.

CERTIFICATE OF SERVICE

I herby certify that a true and correct copy of Defendant, JohnsonFoils, Inc.'s, Responses to Plaintiff, Voith Paper GmbH & Co. KG's, Second Requests for Production of Documents was served via electronic mail and first class mail on the following persons:

Neil F. Greenblum, Esquire
Michael J. Fink, Esquire
Greenblum & Bernstein, P.L.C.
1950 Roland Clarke Place
Reston, Virginia 20191

Adam W. Poff, Esquire
Young, Conaway, Stargatt & Taylor
The Brandywine Building
1000 West Street, 17th Floor
P.O. Box 391
Wilmington, DE 19899-0391

Respectfully submitted,

Date: September 18, 2007

Anthony S. Volpe
Volpe and Koenig, P.C.
United Plaza, Suite 1600
30 South 17th Street
Philadelphia, PA 19103
(215) 568-6400

Attorneys for Defendant JohnsonFoils, Inc.

Exhibit 13

LAW OFFICES
GREENBLUM & BERNSTEIN, P.L.C.
PATENT, COPYRIGHT AND TRADEMARK MATTERS
1950 ROLAND CLARKE PLACE
RESTON, VA 20191-1411
TEL: (703) 716-1191
FAX: (703) 716-1180
EMAIL: gbpatent@gbpatent.com
www.gbpatent.com

NEIL F. GREENBLUM
BRUCE H. BERNSTEIN
JAMES L. ROWLAND
ARNOLD TURK
MICHAEL J. FINK
STEVEN WEGMAN *
WILLIAM PIEPRZ *
STEPHEN M. ROYLANCE
ROBERT W. MUELLER
WILLIAM E. LYDDANE
WILLIAM S. BOSHNICK *
PAUL A. BRAIER, Ph.D.
P. BRANKO PEJIC *
JOHN PRETA *
HERIBERT F. MUENSTERER, Ph.D. °°
LINDA J. HODGE
JOSHUA M. POVSNER *
DANIEL B. MOON
PAUL T. LEE ∆
JOHN V. MAZZOLA °
JAMES KENNETH MOORE, JR.
ENOCH PEAVEY
ANDREW WRIGHT
KATRIN VENTER, Ph.D.
SAFET METJAHIC *
AZZA JAYAPRAKASH
JONATHAN MILLER *

NEAL GOLDBERG
STEVEN B. POLLICOFF *
FAHD MAJIDUDDIN, Ph.D.

OF COUNSEL:
BRUCE H. STONER, JR.
ANDREW M. CALDERON
CHARLES S. MURRAY, JR.*
SEAN MYERS-PAYNE, Ph.D.
LESLIE J. PAPERNER *
RICHARD J. McGRATH
BARRY I. HOLLANDER

TECHNICAL ADVISORS:
THOMAS WEBER, Ph.D.
ZHIDONG HAO, Ph.D.
MONICA S. ULLAGADDI
BO BIN JANG Ph.D.
SARAH J. SMALL
WALTER SCHLAPKOHL, Ph.D.

* ADMITTED TO A BAR OTHER THAN VA
° EUROPEAN PATENT ATTORNEY
∆ KOREAN PATENT ATTORNEY
° REGISTERED PATENT AGENT

October 12, 2007

VIA EMAIL (PDF)

Ryan W. O'Donnell
Volpe and Koenig, P.C.
United Plaza, Suite 1600
30 South 17th Street
Philadelphia, PA 19103

Re: *Voith Paper GmbH & Co. KG ("Voith") v. JohnsonFoils, Inc. ("JohnsonFoils"), C.A. No. 07-0226-JJF.* Our Ref.: 214720.

Dear Ryan:

We write to request that you revise and supplement your discovery responses,[1] to correct several deficiencies, and to request that you provide the requested discovery without delay. Each Discovery Request plainly seeks information that is relevant—or reasonably calculated to discover information that is relevant—to the issues at dispute in this case, including infringement, validity, enforceability, and damages. Yet, apart from a perfunctory recitation of generic objections, JohnsonFoils—nearly six weeks from the date its responses were due—has yet to substantially respond. For the reasons provided in detail below, JohnsonFoils's various objections provide no basis for withholding the requested discovery and, in some cases, are plainly improper. To the extent that JohnsonFoils has preserved a proper objection to a specific discovery request, we invite you to meet with us within five (5) business days of receiving this letter so that we may confer and hopefully resolve any disputes relating to the scope of any

[1] The discovery requests at-issue are Plaintiff's First Set of Interrogatories to JohnsonFoils, Inc. ("First Interrogatories"), Plaintiff's Second Set of Interrogatories to JohnsonFoils, Inc. ("Second Interrogatories") (the "First Interrogatories" and "Second Interrogatories" are collectively referred to as "Interrogatories"), Plaintiff's First Set of Requests for Production to JohnsonFoils, Inc. ("First RFP"), and Plaintiff's Second Set of Requests for Production to JohnsonFoils, Inc. ("Second RFP") (the First RFP and the Second RFP are collectively referred to as the "RFP") (the Interrogatories and the RFP are collectively referred to as the "Discovery Requests").

disputed Discovery Request. Because discovery is clearly being improperly withheld on the basis of the asserted objections[2] described below, we request that you immediately revise and supplement your discovery responses to provide the requested discovery without delay.

First, your failure to provide requested Discovery cannot be excused by the mere possibility that a Discovery Request may be construed to include objectionable documents or information. JohnsonFoils repeatedly objects to Discovery Requests "to the extent that" the request includes documents or information not properly subject to discovery. *See*, e.g., JohnsonFoils's General Objections stated in its Discovery Responses, objecting "to the extent that [Discovery Requests] are overly broad, unduly burdensome, oppressive, [and] premature . . . ." The Federal Rules do not permit a party to craft and rely on a potentially improper interpretation of a discovery request as an excuse to withhold relevant information and documents that are plainly within the scope of the request. On the contrary, JohnsonFoils is required to either produce all relevant documents and information within the scope of the request, comply with provisions relating to the withholding of privileged material, or seek a protective order. *See* Fed. R. Civ. P. 26(b), 26(c); Fed. R. Civ. P. 33(b)(1) (party shall provide answers within the proper scope of an interrogatory); Fed. R. Civ. P. 34(b) (party shall produce documents within the proper scope of a document request). The Federal Rules nowhere sanction the use of such hypothetical or fanciful objections to limit discovery responses. *See* Fed. R. Civ. P. 33(b)(3)(objections must be stated with specificity); Fed. R. Civ. P. 34(b)(reasons for objection must be specified). Moreover, where the purported ground for withholding documents is an asserted privilege, you are required identify the nature of the documents and information withheld and, based on that description, identify the applicable privilege. *See* Fed. R. Civ. P. 26(b)(5). Thus, for example, in every instance where you have objected "to the extent that" a request seeks information protected by some privilege, you are required to identify and describe the materials with sufficient detail to permit Voith to confirm that a proper basis for the asserted privilege exists. *See id.* For each Discovery Request for which you are withholding relevant documents or information based on a hypothetical objection "to the extent that" the request is purportedly improper, please revise and supplement your responses to identify and describe the nature of any documents and information withheld, and state the basis, if any, for withholding them.

JohnsonFoils has also failed to justify withholding documents or information on the basis of privilege. *See* Discovery Responses, throughout. The privilege exception to Rule 26(b) only authorizes withholding requested discovery where a party has identified and described the nature of the discovery withheld, and, based on that description, has further identified an applicable privilege. *See* Fed. R. Civ. P. 26(b)(5). To date, JohnsonFoils has asserted the protections of

[2] The objections at-issue are stated in "Defendant, JohnsonFoils, Inc.'s Responses to Plaintiff, Voith Paper GmbH & Co. KG's First Requests for Production of Documents," ("Response to First RFP"), "Defendant, JohnsonFoils, Inc.'s Responses to Plaintiff, Voith Paper GmbH & Co. KG's First Set of Interrogatories," ("Response to First Interrogatories"), "Defendant, JohnsonFoils, Inc.'s Responses to Plaintiff, Voith Paper GmbH & Co. KG's Second Requests for Production of Documents," ("Response to Second RFP"), and "Defendant, JohnsonFoils, Inc.'s Responses to Plaintiff, Voith Paper GmbH & Co. KG's Second Set of Interrogatories," ("Response to Second Interrogatories") (collectively referred to as JohnsonFoils's "Discovery Responses"). JohnsonFoils's Response to First Interrogatories and JohsonFoils's Response to Second Interrogatories are referred to collectively as JohnsonFoils's "Interrogatory Responses." JohsonsFoils's Response to First RFP and Response to Second RFP are collectively referred to JohnsonFoils's "RFP Responses."

numerous privileges, but has neither identified nor described the nature of any documents withheld. For each discovery request for which you have withheld documents and information based on an asserted privilege, please identify and describe the nature of the discovery withheld, and, based on that description, identify the applicable privilege.

Your objections that various Discovery Requests are "overly broad" also provide no basis for withholding discovery. *See* Discovery Responses, throughout. The Federal Rules do not excuse the obligation to provide relevant discovery based on the mere possibility that a party may craft a broad interpretation of the request that encompasses irrelevant or excluded matter. On the contrary, JohnsonFoils is required to provide requested discovery to the extent that the Discovery Request reasonably identifies relevant subject matter. In each case where JohnsonFoils has objected to the breadth of the request, the Discovery Request is clearly directed to relevant subject matter. Wherever you have withheld documents or information based on the objection that the request is "overly broad," please state with specificity the nature of purported over-breadth and describe the documents and information being withheld on that basis. Also, for each of Discovery Requests in which you have withheld discovery based on this objection, please immediately provide all relevant information and documents within the scope of those requests.

Further, your various objections that a phrase, made up entirely of terms of ordinary language, is vague or undefined, provide no excuse for withholding documents or information. *See, e.g.,* Interrogatory Responses 1, 2, 3, 7, and 8; RFP Responses 1, 2, 3, 5, 6. For each Discovery Request, you must respond to the extent that the request encompasses relevant material. For example, in your response to Interrogatory 1 you object that "one or more resiliently supported blades"—a phrase entirely made up of ordinary terms—is vague and undefined. This phrase plainly encompasses relevant material, as evidenced by JohnsonFoils's response. As JohnsonFoils's response concedes, the phrase plainly encompasses the term "resiliently supported strips"—a term disclosed in the Patents-in-Suit. For each discovery request for which you have withheld discovery based on the assertion that a term or phrase is vague or undefined, please provide the definition that you used to limit your response. Please also immediately revise and supplement your responses to the Discovery Requests to identify any documents or information within the broadest reasonable interpretation of the Discovery Request that you have withheld based on your various claims that terms are "vague or undefined."

Also, the possibility that you may provide Voith with documents from which an answer to an Interrogatory may be ascertained does not excuse your failure to fully answer Voith's Interrogatories at the time your responses were due. *See* Interrogatory Responses, throughout. Fed. R. Civ. P. 33(d) ("Rule 33(d)") provides no basis for withholding the information requested by Voith's Interrogatories. On the plain terms of Rule 33, including Rule 33(d), JohnsonFoils was required to provide the information requested in each of Voith's Interrogatories by the date its responses were due. *Id.* Instead of providing the information required, JohnsonFoils, repeatedly asserts that the information is contained in JohnsonFoils's documents—documents that JohnsonFoils has neither specified nor made available. Your reference to unspecified documents that you "will produce" does not operate to convert Rule 33(d) into an indefinite extension. Rule 33(d) does not authorize this plainly evasive conduct. Instead, Rule 33(d) permits a party to answer an Interrogatory by specifically identifying documents made available from which the requesting party can ascertain the requested information with no greater burden than the responding party. *Id.* Because JohnsonFoils has neither identified nor made available any documents containing the requested information, your reliance on Rule 33(d) is improper. Plainly, because no documents have been identified or made available, the burden to Voith in extracting the requested information from JohnsonFoils's documents is vastly greater than any burden purportedly imposed on JohnsonFoils. In each instance where you have relied on Rule 33(d) in lieu of providing a substantive answer you must immediately identify the documents that contain the requested information with specificity and make them available. You must also prepare an answer to each interrogatory in all cases where doing so would be less burdensome to you than a search through the identified documents.

JohnsonFoils's failure to provide requested discovery is not justified by your repeated objections of "undue burden" and "harassment." *See* Discovery Responses, throughout. Because each Discovery Request is clearly directed to relevant information and documents, the burdens they impose on JohnsonFoils are no different than those imposed on any party involved in litigation. Such burdens are not undue, and cannot justify a failure to respond to a Discovery Request. For each Discovery Request for which you have interposed an objection of "undue burden" please provide specific details of the purported burdens involved in providing the documents or information requested. Once you have provided this information, we are willing to confer with you in order to minimize the expense and inconvenience to both parties while satisfying Voith's need for the requested information. In view of the clear relevance of each Discovery Request, your objection that Voith's Discovery Requests are "harassing," is improper and should be withdrawn immediately.

Nor can your failure to provide the requested discovery be excused by characterizing the request as "premature." *See* Discovery Responses, throughout. Each discovery request requires you to conduct a reasonable investigation and then answer or produce documents based on that investigation. *See* Fed. R. Civ. P. 26(g)(2) (discovery responses are to be based on a reasonable inquiry). Moreover, your failure to either reasonably investigate or include the results of your investigation in your response is not excused by possibility that you will supplement your inadequate responses in the future. *Id.* (response for the purpose of delay is impermissible). Please immediately revise and supplement your discovery responses to provide all information and documents improperly withheld under the claim that the request is "premature."

Similarly, your failure to respond to Discovery Requests is not excused by the possibility that you will supplement your responses and disclosures in the future. *See* Discovery Responses, throughout. The duty under Fed. R. Civ. P. 26(e) ("Rule 26(e)") to supplement disclosures and responses does not extend the time provided for discovery responses. Plainly, the supplementation authorized by Rule 26(e) is limited to information acquired after a proper discovery response—including the results of the required reasonable inquiry—has been provided. *See* Rule 26(e) (after responding, supplementation includes "information thereafter acquired"); Fed. R. Civ. P. 26(g) (requiring disclosure to be complete and correct as of the time of a response). Moreover, Rule 26(e)(1) plainly refers to supplementation made at the time new information is learned. Nowhere does Rule 26(e) cure a failure to provide a timely and proper discovery response in the first instance. Please immediately supplement and revise your discovery responses to disclose all requested information and documents now known to you.

That your response to a request would result in the production of "voluminous quantities of documents" is also no reason for withholding documents or information. *See* Discovery Responses, throughout. The Federal Rules are clear that all relevant information and documents must be provided absent the availability of a specifically enumerated exception or a protective order. *See* Fed. R. Civ. P. §§ 26(b), 26(c). The number of documents responsive to a request is neither an exception to Rule 26 nor one of the grounds enumerated for seeking a protective order. For each document request and interrogatory, identify and describe the nature of the "voluminous documents" which you are withholding on account of this objection. Once you have described the "voluminous documents" with sufficient particularity, we will confer with you regarding their production in order to minimize expenses for both parties while ensuring that Voith obtains the requested information.

In addition, your objection that a Discovery Request does not include a time limitation does not justify withholding documents or information. *See* Disovery Responses, throughout. Where a time limitation is not specified you are to treat the time period as the broadest time period that would result in the disclosure of documents and information consistent with Rule 26. For each document request and interrogatory, identify and describe the nature of the documents and information which you are withholding on account of this objection. Once you have described the documents and information with sufficient particularity, we will confer with you in order to agree to a specific time period that ensures the disclosure of relevant information. All responsive documents and information within the scope of a Discovery Request limited in time as described above must be provided without delay.

Your objection to Voith's definition of "Defendant" is also no basis for withholding documents and information. *See* Discovery Responses, throughout. First, The Federal Rules are clear that JohnsonFoils is obligated to produce all relevant documents and information that are in its "possession, custody, or control." *See* Fed. R. Civ. P. 34(a). Thus, for all persons or entities that JohnsonFoils controls, JohnsonFoils is obligated to produce all documents for which such persons or entities have possession, custody, or control. The same extends to any persons or entities controlled by persons or entities controlled by JohnsonFoils. Therefore, Voith's definition of "Defendant"—to include, *inter alia*, divisions, subsidiaries, or other entities over which JohnsonFoils has control—does not extend the scope of any document request or interrogatory beyond that expressly authorized by the Federal Rules. Please promptly provide all documents and information that you have withheld based on your improperly limiting the term "Defendant" to "JohnsonFoils, Inc."

Finally, that there has not been an agreement on a Protective Order in this case is no basis for withholding your responses to Discovery Requests. *See* Discovery Responses, throughout. The Court's rules are clear that the absence of an agreed protective order does not operate to delay discovery. Specifically, Local Rule 26.2 ("Confidentiality") provides that, prior to the entry of an agreed protective order, all disclosures are limited to attorneys of record and their staff.[3] Please provide any documents and information that you are withholding on the basis of this improper objection.

As described in detail above, JohnsonFoils has failed to provide any basis for withholding documents and information in response to the Discovery Requests. Please supplement and revise your responses and provide the requested discovery immediately. To the extent that JohnsonFoils has preserved an objection to Voiths First Discovery Requests (served July 26, 2007) and/ or Voith's Second Discovery Requests (served August 16, 2007), we request that you confer with us within five (5) days of this letter.

Sincerely,

Neal Goldberg

[3] "If any documents are deemed confidential by the producing party and the parties have not been able to agree on an appropriate protective order, until a protective order is in [3]effect, disclosure should be limited to members and employees of the firm of trial counsel who have entered an appearance, and, where appropriate, have been admitted pro hac vice. Such persons are under an obligation to keep such documents confidential and to use them only for purposes of litigating the case." D. Del. Local Rule 26.2 ("Confidentiality").

Exhibit 14

Volpe and Koenig P.C.

United Plaza, Suite 1600
30 South 17th Street
Philadelphia, PA 19103

Telephone: +1-215-568-6400
Facsimile: +1-215-568-6499
www.volpe-koenig.com

BRINGING LAW TO YOUR IDEAS

Ryan W. O'Donnell
RODonnell@volpe-koenig.com

October 18, 2007

Neil Goldberg, Esquire
Greenblum & Bernstein, P.L.C.
1950 Roland Clarke Place
Reston, VA 20191

VIA E-MAIL
ORIGINAL TO FOLLOW

Re: *Voith Paper GMBH & Co. KG v. JohnsonFoils, Inc.*
U.S.D.C. for the District of Delaware
Civil Action No. 07-226-JJF

Dear Neil:

We write in response to your October 12, 2007 letter. We find your tone and accusations less than professional in view of counsels' exchanges regarding the manner and format for document production and the entry of a protective order. It would be a waste of the parties' time and expense to initially produce documents as attorneys' eyes only pursuant to Local Rule 26.2, and then duplicate this effort by performing a second review of these documents for the appropriate level of confidentiality pursuant to a protective order. Such duplication of efforts should be easily avoided by agreeing to the terms of the protective order beforehand.

As you recall, my August 24, 2007 e-mail inquired on whether you intend to circulate a draft protective order for this matter. Your August 27, 2007 response stated that you were planning to circulate a draft protective order -- which we have not received to date. Mr. Volpe's September 19 and 20, 2007 letters again requested whether you intend to circulate a proposed protective order, and Mr. Fink's September 21, 2007 response stated that we would have a draft "by early next week." Again, we did not receive a draft of the protective order within the time frame you provided. We again ask if you intend to circulate a draft protective order, and, if so, we request that you do it as soon as possible as it will help resolve this matter without protracted letter writing campaigns.

Your letter also ignores counsels' prior discussions regarding the format for document production. Mr. Fink initially raised the issue of the format and timing for document production in his September 20, 2007 letter, and Mr. Volpe responded on that date stating that JohnsonFoils will exchange documents once we have an agreed upon time and format. In addition, Mr. Volpe's letter stated that we would be available on October 1, 2007 to discuss this matter, and Mr. Fink's September

Volpe and Koenig P.C.

21, 2007 letter agreed to that date and stated that he would initiate the call. While Mr. Volpe and I were prepared to discuss this matter with you and/or Mr. Fink on October 1, 2007 (and still remain so prepared), we did not receive a call from you or Mr. Fink on October 1, 2007. In fact, we have not received the courtesy of any communication from you to reschedule this conference.

Your October 12, 2007 letter is premature and ignores your failure to advance the aforementioned issues. You also seemingly fail to consider that Voith has not produced any documents to date and that Voith's written discovery responses raise many of the same concerns identified in your October 12, 2007 letter.

We remain interested in resolving these issues in order to move forward with discovery in an organized manner. Tony and I will not be available for the remainder of this week, but will be generally available Monday through Wednesday next week (October 22-24, 2007) to discuss these issues.

Please propose a mutually convenient time to discuss the above matters.

Very truly yours,

Volpe and Koenig, P.C.

By: Ryan W. O'Donnell
Ryan W. O'Donnell

RWO/ASV/cps

cc: Michael J. Fink, Esquire (via e-mail only)
Adam Wyatt Poff, Esquire (via e-mail only)
George H. Seitz, III, Esquire (via e-mail only)
Patti McGonigle, Esquire (via e-mail only)

Exhibit 15

ORCHID RUSHENAS

From: NEAL GOLDBERG
Sent: Wednesday, October 24, 2007 4:37 PM
To: Tony Volpe
Cc: 'Ryan O'Donnell'; MICHAEL FINK; apoff@ycst.com; NEIL GREENBLUM; Patricia P McGonigle; George H Seitz III
Subject: RE: Voith vs. Johnson Foils, USDC for Delaware: 1:07-cv-00226-JJF
G&B File Number: J214720

Dear Tony:

In view of our substantial disagreement over JohnsonFoils's failure to adequately respond to Voith's Interrogatories and Document Requests, we regret that you abruptly terminated our telephone meet and confer this afternoon by hanging up on us. As described in detail in our letter dated October 12, 2007, your objections and responses fail to justify withholding the requested discovery.

Also, as we explained in prior correspondence and in our telephone conference today, we do not agree that you are
entitled to withhold documents until an agreed protective order is entered - especially in view of the Court's Rule 26.2
providing that all documents produced prior to entry of a protective order be treated as "Attorneys Eyes Only."
In addition, as we reminded you this afternoon, we are marking documents with the designation "Confidential" and "Highly Confidential" now so that they will not have to be redesignated--as you seem to have suggested--when a protective order is in place.

Although we had hoped to avoid burdening the Court with this discovery dispute, unless you initiate a conference call to speak with us before the close of business today to resolve our outstanding disputes, we intend to seek relief from the Court.

Despite your failure to negotiate with us in good faith regarding your discovery obligations, we intend to move forward with our document production.

Sincerely,

Neal Goldberg
Greenblum & Bernstein, P.L.C.
1950 Roland Clarke Place
Reston, VA 20191
Tel: (703) 716 1191
Fax:(703) 716 1180
E-Mail: ngoldberg@gbpatent.com

CONFIDENTIAL: SUBJECT TO ATTORNEY-CLIENT PRIVILEGE
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and delete the original message.

****

From: Ryan O'Donnell [mailto:RODonnell@volpe-koenig.com]
Sent: Tuesday, October 23, 2007 11:25 AM
To: NEAL GOLDBERG
Cc: Tony Volpe; MICHAEL FINK; apoff@ycst.com; NEIL GREENBLUM; Patricia P McGonigle; George H Seitz III
Subject: RE: Voith vs. Johnson Foils, USDC for Delaware: 1:07-cv-00226-JJF

Dear Neal:

Tony and I have a conflicting appointment tomorrow, and are not available until 4:00 pm tomorrow afternoon. If this time does not work for you, we are also available for this discussion after 11:00 pm on Monday, October 29, 2007. Please let us know at the earliest which time works for you.

Regards,

Ryan

From: NEAL GOLDBERG [mailto:ngoldberg@gbpatent.com]
Sent: Monday, October 22, 2007 5:53 PM
To: Ryan O'Donnell
Cc: Tony Volpe; MICHAEL FINK; apoff@ycst.com; NEIL GREENBLUM; NEAL GOLDBERG
Subject: RE: Voith vs. Johnson Foils, USDC for Delaware: 1:07-cv-00226-JJF

Dear Ryan:

Thank you for proposing to confer with us regarding ongoing discovery issues.

Within the time frame you proposed, we are available on Wednesday morning.

Please propose a time.

Sincerely,

Neal

Neal Goldberg
Greenblum & Bernstein, P.L.C.
1950 Roland Clarke Place
Reston, VA 20191
Tel: (703) 716 1191
Fax:(703) 716 1180
E-Mail: ngoldberg@gbpatent.com

CONFIDENTIAL: SUBJECT TO ATTORNEY-CLIENT PRIVILEGE
****

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****

From: Ryan O'Donnell [mailto:RODonnell@volpe-koenig.com]
Sent: Thursday, October 18, 2007 11:17 AM
To: NEAL GOLDBERG
Cc: Tony Volpe; John O'Malley; Patricia P McGonigle; George H Seitz III; MICHAEL FINK; apoff@ycst.com
Subject: Voith vs. Johnson Foils, USDC for Delaware: 1:07-cv-00226-JJF

Dear Neal:

Please see the attached response to your October 12, 2007 letter.

Regards,

Ryan

<<ODonnell-Goldberg-20071018.pdf>>

Ryan W. O'Donnell
Volpe and Koenig, P.C.
United Plaza, Suite 1600
30 South 17th Street
Philadelphia, PA 19103
RODonnell@volpe-koenig.com
Tel. 215.568.6400 / Fax 215.568.6499

Volpe and Koenig P.C.
United Plaza, Suite 1600
30 South 17th Street
Philadelphia, PA 19103
Tel 215.568.6400 Fax 215.568.6499
www.volpe-koenig.com

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Exhibit 16

LAW OFFICES
GREENBLUM & BERNSTEIN, P.L.C.
PATENT, COPYRIGHT AND TRADEMARK MATTERS
1950 ROLAND CLARKE PLACE
RESTON, VA 20191-1411
TEL: (703) 716-1191
FAX: (703) 716-1180
EMAIL: gbpatent@gbpatent.com
www.gbpatent.com

NEIL F. GREENBLUM
BRUCE H. BERNSTEIN
JAMES L. ROWLAND
ARNOLD TURK
MICHAEL J. FINK
STEVEN WEGMAN *
WILLIAM PIEPRZ *
STEPHEN M. ROYLANCE
ROBERT W. MUELLER
WILLIAM E. LYDDANE
WILLIAM S. BOSHNICK *
PAUL A. BRAIER, Ph.D.
P. BRANKO PEJIC *
JOHN PRETA *
HERIBERT F. MUENSTERER, Ph.D. □○
LINDA J. HODGE
JOSHUA M. POVSNER *
DANIEL B. MOON
PAUL T. LEE △
JOHN V. MAZZOLA ○
JAMES KENNETH MOORE, JR.
ENOCH PEAVEY
ANDREW WRIGHT
KATRIN VENTER, Ph.D.
SAFET METJAHIC *
AZZA JAYAPRAKASH
JONATHAN MILLER *

NEAL GOLDBERG
STEVEN B. POLLICOFF *
FAHD MAJIDUDDIN, Ph.D.

OF COUNSEL:
BRUCE H. STONER, JR.
ANDREW M. CALDERON
CHARLES S. MURRAY, JR.*
SEAN MYERS-PAYNE, Ph.D.
LESLIE J. PAPERNER *
RICHARD J. McGRATH
BARRY I. HOLLANDER

TECHNICAL ADVISORS:
THOMAS WEBER, Ph.D.
ZHIDONG HAO, Ph.D.
MONICA S. ULLAGADDI
BO BIN JANG Ph.D.
SARAH J. SMALL
WALTER SCHLAPKOHL, Ph.D.

* ADMITTED TO A BAR OTHER THAN VA
○ EUROPEAN PATENT ATTORNEY
△ KOREAN PATENT ATTORNEY
□ REGISTERED PATENT AGENT

October 31, 2007

VIA EMAIL(PDF)

Tony Volpe, Esq.
Volpe and Koenig, P.C.
United Plaza, Suite 1600
30 South 17th Street
Philadelphia, PA 19103

Re: *Voith Paper GmbH & Co. KG ("Voith") v. JohnsonFoils, Inc. ("JohnsonFoils"), C.A. No. 07-0226-JJF.* Our Ref.: 214720.

Dear Tony:

We write to respond to your letter dated October 24, 2007, relating to our "meet and confer" telephone conference ("10-24 Letter"). As we stated in our e-mail dated October 24, 2007, we find it regrettable that you chose to terminate our telephone conference by hanging up on us rather than working with us to resolve our continuing discovery disputes. We remind you that we agreed to that telephone conference to accommodate your schedule, despite your continuing failure to either provide requested information and documents or to respond to our objections as stated in our letter dated October 12, 2007. Although we understand our obligation to confer with you on discovery disputes, that obligation does not constitute a license for you to perpetually avoid your obligations to provide the requested information and documents.[1]

We remind you that, notwithstanding our agreement to do the extensive work of drafting and circulating a protective order—a task JohnsonFoils never offered to undertake—the Court's Local Rule 26.2 is clear that discovery is to proceed in the absence of an agreed protective order.

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[1] Although you appear to justify hanging up on us by alleging that Mr. Fink interrupted you, the fact that 1) you managed to repeatedly convey your concerns about the protective order during the call, and 2) your 10-24 Letter contains no response to our objections to your discovery responses, suggests otherwise. It is more likely that at the point you claim to have been interrupted, you had made a conscious decision to cease conferring and, instead, had decided to disrupt the remainder of the call with your repeated improper protective order objection. Indeed, you ignored our immediate follow-up e-mail invitation to continue conferring and have not called us since.

As we have repeatedly explained to you, Rule 26.2 specifically provides that, prior to the entry of an agreed protective order, documents and information are to be provided on an Attorneys' Eyes Only basis. Evidently, were the rule otherwise, a party could evade its discovery obligations indefinitely by refusing to agree to the terms of a proposed Protective Order.

Indeed, long ago, in a letter sent to you by e-mail on September 21, 2007, we informed you that we were in the process of drafting a protective order that would have two levels of confidentiality "Highly Confidential" and "Confidential."[2] In addition, we explained that Highly Confidential documents would be limited to trial counsel and qualified experts. We provided you with that information specifically so that you could label your documents accordingly and avoid a duplication of effort once a protective order was entered.[3] Notably, you said nothing to indicate your disagreement with our proposed confidentiality designations, and we labeled our documents, and continued work on a draft protective order, accordingly. Yet, in your 10-24 Letter you surprisingly state that "[JohnsonFoils does] not agree to these designations and [is] not bound by them without entry of a protective order." In light of the fact that we reasonably relied on your lack of objection and labeled our documents for production accordingly, your statement that "[JohnsonFoils] will not be sympathetic to any duplication of effort on your behalf to actually mark your documents appropriately when a protective order is entered" demonstrates your lack of good faith. The fact that your 10-24 Letter refers to Mr. Fink's letter dated September 21, 2007, demonstrates that your present claim that you learned of our proposed confidentiality designations for the first time on October 24 is knowingly false.

As we informed you during our telephone meet and confer, despite your continuing failure to respond to our objections to your failure to provide requested information and documents, we are moving ahead with our production of documents to JohnsonFoils. We remind you of your obligations under Rule 26.2 to treat all of our documents as Attorneys' Eyes Only prior to the entry of an agreed protective order. Because you have declared that you will not respect Voith's confidentiality designations, we insist that you immediately confirm your intention to respect the Court's rules and the confidentiality of Voith's documents and information.

Further, in light of your egregious conduct at our last telephone conference, and your continuing failure to respond to discovery requests in derogation of the Court's rules, we intend to seek relief from the Court.[4] Because, as we have explained, you have no proper legal basis for withholding discovery we reiterate our demand that you provide the requested documents and information, and continue gathering supplemental production in anticipation of a Court Order compelling you to provide them to Voith.

---

[2] Specifically, on September 21, 2007, we explained: "We anticipate that the agreed protective order will have two levels of confidentiality: Highly Confidential and Confidential. The disclosure of Highly Confidential information will be limited to a party's litigation counsel and qualified experts. In accordance with the Court's rules, until a protective order is entered, all confidential information will be treated as Attorneys' Eyes Only. Accordingly, the absence of a protective order does not suspend the obligation to produce documents."

[3] In view of our clear statements to you relating to our proposed confidentiality designations on September 21, 2007, and your failure to state any disagreement with that proposal for over a month, the claim in your 10-24 Letter that Mr. Fink "advised [JohnsonFoils] for the first time that he already decided there will be (2) levels of confidentiality in this case, 'confidential' and 'highly confidential,' and that [JohnsonFoils] should have already begun marking [its] documents accordingly" is incorrect.

Finally, we enclose a draft Protective Order for your review. Please provide any proposed changes or confirm your agreement to its terms as soon as possible.

Very truly yours,

GREENBLUM & BERNSTEIN, P.L.C.

Neal Goldberg

Enclosure: Draft Protective Order

[4] We deem your purported "professional courtesy" requirements to any future telephone conferences to be yet another improper attempt to evade your discovery obligations. Apart from denying any unprofessional conduct on the part of Mr. Fink, your "requirement" deserves no comment.

Exhibit 17

Volpe and Koenig P.C.

United Plaza, Suite 1600
30 South 17th Street
Philadelphia, PA 19103

Telephone: +1-215-568-6400
Facsimile: +1-215-568-6499
www.volpe-koenig.com

BRINGING LAW TO YOUR IDEAS

Anthony S. Volpe
avolpe@volpe-koenig.com

September 19, 2007

VIA E-MAIL AND FACSIMILE

Michael J. Fink, Esquire
Greenblum & Bernstein, P.L.C.
1950 Roland Clarke Place
Reston, VA 20191

Re: Voith Paper GMBH & Co. KG v. JohnsonFoils, Inc.
In the United States District Court for the District of Delaware
Civil Action No. 07-226-JJF

Dear Michael:

We want to review the Voith document production as soon a possible. We will review it at Adam's office or George's office in Delaware. Please let us know the volume of documents and when they will be available at either location.

As we do not have a protective order at this time, we will review them as "Attorneys' Eyes Only" until you have an opportunity to classify them under the anticipated protective order.

We look forward to hearing from you.

Very truly yours,

Volpe and Koenig, P.C.

By: [signature]
Anthony S. Volpe

ASV/vag

cc: Benjamin P. Kota, Esquire (via E-Mail Only)
Neil F. Greenblum, Esquire (via E-Mail Only)
Adam Wyatt Poff, Esquire (via E-Mail Only)
George H. Seitz, III, Esquire (via E-Mail Only)
Patti McGonigle, Esquire (via E-Mail Only)

Exhibit 18

LAW OFFICES
GREENBLUM & BERNSTEIN, P.L.C.
PATENT, COPYRIGHT AND TRADEMARK MATTERS
1950 ROLAND CLARKE PLACE
RESTON, VA 20191-1411
TEL: (703) 716-1191
FAX: (703) 716-1180
EMAIL: gbpatent@gbpatent.com
www.gbpatent.com

NEIL F. GREENBLUM
BRUCE H. BERNSTEIN
JAMES L. ROWLAND
ARNOLD TURK
MICHAEL J. FINK
STEVEN WEGMAN *
WILLIAM PIEPRZ *
STEPHEN M. ROYLANCE
ROBERT W. MUELLER
WILLIAM E. LYDDANE
WILLIAM S. BOSHNICK *
PAUL A. BRAIER, Ph.D.
P. BRANKO PEJIC *
JOHN PRETA *
HERIBERT F. MUENSTERER, Ph.D. ◦◦
LINDA J. HODGE
JOSHUA M. POVSNER *
DANIEL B. MOON
PAUL T. LEE ◦
JOHN V. MAZZOLA ◦
JAMES KENNETH MOORE, JR.
ENOCH PEAVEY
ANDREW WRIGHT
KATRIN VENTER, Ph.D.
SAFET METJAHIC *
AZZA JAYAPRAKASH
JONATHAN MILLER *

NEAL GOLDBERG
STEVEN B. POLLICOFF *
FAHD MAJIDUDDIN, Ph.D.

OF COUNSEL:
BRUCE H. STONER, JR.
ANDREW M. CALDERON
CHARLES S. MURRAY, JR.*
SEAN MYERS-PAYNE, Ph.D.
LESLIE J. PAPERNER *
RICHARD J. McGRATH
BARRY I. HOLLANDER

TECHNICAL ADVISORS:
THOMAS WEBER, Ph.D.
ZHIDONG HAO, Ph.D.
MONICA S. ULLAGADDI
BO BIN JANG Ph.D.
SARAH J. SMALL
WALTER SCHLAPKOHL, Ph.D.

* ADMITTED TO A BAR OTHER THAN VA
◦ EUROPEAN PATENT ATTORNEY
Δ KOREAN PATENT ATTORNEY
□ REGISTERED PATENT AGENT

September 21, 2007

VIA EMAIL (PDF)

Anthony S. Volpe
Volpe and Koenig, P.C.
United Plaza, Suite 1600
30 South 17th Street
Philadelphia, PA 19103

Re: *Voith v. JohnsonFoils.*; Our Ref: J214720

Dear Tony:

In response to your letter of September 20, 2007, in which you provided your availability for a call to discuss pending discovery issues on Monday, October 1, 2007, let's schedule the call for 11:30 a.m. I will initiate the call.

Also, as it appears from your letter that JohnsonFoils's documents are ready for production, please provide them to us as soon as possible. We prefer that documents be provided in their native format, *i.e.*, in accordance with Fed. R. Civ. P. 34(b).

Responding to your request that we circulate a protective order, we are in the process of finalizing a draft and expect to provide it to you by early next week. We anticipate that the agreed protective order will have two levels of confidentiality: Highly Confidential and Confidential. The disclosure of Highly Confidential information will be limited to a party's litigation counsel and qualified experts. In accordance with the Court's rules, until a protective order is entered, all confidential documents will be treated as Attorneys' Eyes Only. Accordingly, the absence of a protective order does not suspend the obligation to produce documents.

Additionally, please promptly provide a copy of the insurance policy (and any related documents) which you identified in JohnsonFoils's initial disclosures. We will maintain the documents as Attorneys' Eyes Only until entry of a stipulated protective order.

We are still in the process of gathering Voith's responsive documents and reviewing the documents for privilege. We are working diligently to complete the task, but as I informed you before, our task is complicated by the need to gather documents, many of which are in German, from overseas. I will let you know as soon as we have documents ready for production. As you have indicated that your responsive documents are ready for production, please provide them to us by next week.

Very truly yours,

GREENBLUM & BERNSTEIN, P.L.C.

Michael J. Fink

MJF/mis

cc: Adam Poff, Esq.
George H. Seitz, III, Esq.

Exhibit 19

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

VOITH PAPER GMBH & CO. KG,	)
	)
Plaintiff,	)
	)
v.	) C.A. No. 07-226-JJF)
JOHNSONFOILS, INC.,	)
	)
Defendant.	)
	)

STIPULATED PROTECTIVE ORDER

YOUNG CONAWAY STARGATT & TAYLOR, LLP
Adam W. Poff (No. 3990)
Young Conaway Stargatt & Taylor, LLP
The Brandywine Building
1000 West Street, 17th Floor
Wilmington, Delaware 19899
(302) 571-6600
apoff@ycst.com

GREENBLUM & BERNSTEIN, P.L.C.
Neil F. Greenblum
Michael J. Fink
Neal Goldberg
1950 Roland Clarke Place
Reston, Virginia 20191
(703) 716-1191

Attorneys for Plaintiff, Voith Paper GmbH & Co. KG.

George H. Seitz, III (DE #667)
Patricia Pyles McGonigle (DE #667)
Kevin A. Guerke (DE #4096)
SEITZ, VAN OGTROP & GREEN, P.A.
222 Delaware Avenue, Suite 1500
P.O. Box 68
Wilmington, DE 19899
(302) 888-7602

Anthony S. Volpe, Esquire, PA # 24,733
Randolph J. Huis, Esquire, PA # 64,457
Ryan W. O'Donnell, Esquire, PA # 89,775
VOLPE AND KOENIG, P.C.
United Plaza, Suite 1600
30 S. 17th Street
Philadelphia, PA 19103

Attorneys for Defendant, Johnsonfoils, Inc.

Dated: November 1, 2007

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It is hereby stipulated by and between counsel for the parties in the above referenced action ("the Parties") that the following terms and conditions of this Stipulated Protective Order ("Protective Order") shall govern the conduct of discovery by the parties in this litigation.

1. Scope of Order. This Protective Order shall apply to all discovery of the Parties and shall apply to all information, documents and/or things owned, possessed, controlled and/or produced by any party subject to discovery in this action. This Protective Order shall further govern the production of documents, information and/or things supplied in this case in any form by a party and designated by that party as containing or embodying confidential information.

2. Limited Use of Discovery Materials. The term "Discovery Material" includes all documents, information, and/or things that any party obtains from another party in the course of discovery. For example, Discovery Material includes any documents or information produced, created, or generated in response to a discovery request, such as answers and responses to interrogatories, document requests, and requests for admission. Discovery Material also includes the content of depositions, including without limitation, any deposition transcripts. The only "Legitimate Purposes" of discovery materials obtained in this action are to a) support or rebut a claim or defense of a party in this action; or b) to discover materials that support or rebut a claim or defense of any party in this action. Discovery Material is provided solely to the extent needed for Legitimate Purposes of this action. Discovery Materials shall only be used for such Legitimate Purposes within this litigation. Any other use of Discovery Material is strictly prohibited.

3. Confidential Material. "Confidential Information" is any non-public information that is only disclosed under terms, express or implied, that would require the receiving party to maintain its confidentiality. "Confidential Material" is any tangible embodiment of information

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that contains Confidential Information. For example, Confidential Material includes any document, information, thing, or portion thereof, whether an original or a copy, including any exhibits and/or attachments, that contains Confidential Information. Confidential Material also includes any document or information produced in the course of litigation, such as letters, electronic or otherwise, responses to interrogatories, document requests, requests for admission, and deposition testimony, that contains Confidential Information. In addition, Confidential Material includes physical objects and recordings that contain Confidential Information. Anything designated, in good faith, by a party as Confidential Material is to be treated as Confidential Material under the terms of this Protective Order unless or until the designating party retracts the designation or is ordered to do so by the Court.

4. Highly Confidential Material. "Highly Confidential Information" is non-public information that includes or reflects particularly sensitive business or technical information of a party. "Highly Confidential Material" is any tangible embodiment of information that contains Highly Confidential Information. For example, Highly Confidential Material includes any document or portion thereof, whether an original or a copy, including any exhibits or attachments, that contains Highly Confidential Information. Highly Confidential Material also includes any document produced in the course of litigation, such as answers and responses to interrogatories, document requests, requests for admission, and/or deposition questions and answers, that contains Highly Confidential Material. In addition, Highly Confidential Material includes physical objects, recordings or things that contain Highly Confidential Information. Anything designated, in good faith, by a party as Highly Confidential Material is to be treated as Highly Confidential Material under the terms of this Protective Order unless or until the designating party retracts the designation or is ordered to do so by the Court.

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5. Designation of Confidential and Highly Confidential Materials.

(a) Designating Discovery Materials. Discovery Materials which a party, in good faith, believes to contain Confidential Information shall be designated Confidential Material by affixing or incorporating the label "CONFIDENTIAL" thereon. Discovery Materials which a party, in good faith, believes to contain Highly Confidential Information, shall be designated Highly Confidential Material by affixing or incorporating the label "HIGHLY CONFIDENTIAL" thereon. When labeling a document, the label shall be affixed on each page. Labeling a thing with a confidentiality designation, such as a CD or DVD, shall be deemed to apply the label to all documents and things it contains, unless the designating party expressly provides otherwise in writing. In all cases, the designating party shall make reasonable efforts to ensure that any such label is conspicuous. Where labeling is not reasonably feasible a party may, in lieu of labeling, provide notice in writing that specifically identified Discovery Materials constitute Confidential Material or Highly Confidential Material.

(b) Misdesignation of Discovery Materials A party may cure an inadvertent failure to stamp or otherwise designate a document, information, or thing ("Misdesignated Material") at the time of its disclosure as Confidential or Highly Confidential by notifying the recipient within ten (10) business days after discovering the error. Upon receiving such notice, and allowing for reasonable opportunity to inform anyone receiving the Misdesignated Material or information derived therefrom prior to such notice, the Misdesignated Material will be treated as if it bears the corrected designation pursuant to the terms of this Protective Order. Subject to the receiving party's obligation to take reasonable steps to prevent further disclosure and/or use of Misdesignated Material, a party's disclosure of Misdesignated Material prior to receiving notice,

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including any unavoidable subsequent disclosures caused by the misdesignation, shall not constitute a violation of this Protective Order.

At the producing party's option, Misdesignated Material shall be returned to the producing party—provided that reasonable expenses relating to the return are reimbursed—or be destroyed. Replacement Discovery Materials bearing the appropriate confidentiality designation shall be promptly provided.

(c) Inspection Permitted Prior to Designation. To expedite discovery, the parties agree that documents and information may be made available for inspection without designation and designated subsequently at the time of production. Until production, all such documents shall be treated as Highly Confidential.

(d) Deposition Testimony. In the case of depositions upon oral examination of any person, including without limitation depositions of any party deponent pursuant to Fed. R. Civ. P. 30(b)(6), a party's employees or agents, former employees or agents, consultants or experts of Plaintiff or Defendant, or others, the testimony of the witness shall be deemed Highly Confidential until the expiration of forty (40) days after the receipt of the final transcript of the deposition by counsel for both parties ("Transcript Designation Period"). It shall not be necessary for a party to designate specific testimony as "Confidential" or "Highly Confidential" during the course of a deposition, but counsel for a party may designate the transcript, or any part thereof, Confidential or Highly Confidential during the deposition. During the Transcript Designation Period, either party may designate all or portions of the deposition transcript as containing its Confidential Information or Highly Confidential Information within the Designation Period. Unless otherwise provided by stipulation of the parties, further order of the Court, or other terms and conditions of this Protective Order, deposition transcripts are deemed

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to have been produced with the designations provided as of the expiration of the Transcript Designation Period.

6. Qualified Persons. Every "Qualified Person" must satisfy all the terms and conditions in the subsection entitled "General Qualifications," and must further satisfy all of the terms and conditions of at least one of sections (a) through (c) in the subsection entitled "Specific Qualifications."

General Qualifications. Every "Prohibited Person," as that term is defined in the section "Persons to Whom Disclosure is Prohibited" below, is expressly excluded from the class of Qualified Persons. Prior to being provided with access to any Confidential or Highly Confidential Information, except as expressly authorized by this Court's Local Rule 26.2 ("Confidentiality") prior to the entry of this Protective Order, all Qualified Persons, other than court personnel belonging to category (c) below, must 1) execute the attached Undertaking, thereby agreeing to be bound by the terms and conditions of this Protective Order; and 2) be properly designated pursuant to the procedures outlined in the section entitled Designation of Persons with Access to Confidential and/or Highly Confidential Information below. Every Qualified Person is responsible for ensuring that any essential support staff exposed to Highly Confidential or Confidential Information, including outside service providers and vendors, abide by all terms and conditions of this Protective Order.

Specific Qualifications:

(a) Outside Counsel and Essential Support Staff. Outside lawyers appearing of record in this litigation, on behalf of a party, and other lawyers in their respective law firms, and members of their staff to whom it is necessary that material be disclosed for the purpose of this litigation, including commercial copying vendors, draftsmen, etc. Each outside lawyer in this

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category shall execute the Undertaking attached as Exhibit A to this Protective Order and satisfy the terms and conditions of the section Designation of Persons with Access to Confidential and/or Highly Confidential Information prior to being exposed to any Confidential Information or Highly Confidential Information, except as expressly provided by this Court's Local Rule 26.2 ("Confidentiality") prior to the entry of this Protective Order. Each outside lawyer shall not presently, or within the next three (3) years, be involved, directly or indirectly, in any matters pending before a patent authority relating to the subject matter of this litigation. Each outside lawyer is responsible for ensuring that members of their staff are aware of, and adhere to, the terms of this Protective Order.

(b) Experts or Litigation Consultants Unaffiliated With Parties or Competitors. Any person not presently a principal shareholder, officer, director, employee or independent contractor of a party or of any competitor to a party to this action, who is expressly retained or sought to be retained for the limited purpose of providing specific assistance in preparing this action for trial, and who is not presently, or within the next three (3) years, involved, directly or indirectly, in any matters pending before a patent authority relating to the subject matter of this litigation. Persons qualifying in this category may only review Confidential Material or Highly Confidential Material to the extent necessary to perform work directly related to Legitimate Purposes of this action. Each member of this category shall execute the Undertaking attached as Exhibit A to this Protective Order and satisfy the terms and conditions of the section Designation of Persons with Access to Confidential and/or Highly Confidential Information prior to being exposed to any Confidential Information or Highly Confidential Information. Each individual in this category is responsible for ensuring that members of their staff are aware of, and adhere to, the terms of this Protective Order.

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(c) Essential support staff unaffiliated with any party. Court reporters, stenographic reporters, certified translators, certified interpreters, and Court personnel as are necessary for the conduct of discovery, trial preparation or trial, and are unaffiliated with any party. Each member of this category, except court personnel, shall execute the Undertaking attached as Exhibit A to this Protective Order and satisfy the terms and conditions of the section Designation of Persons with Access to Confidential and/or Highly Confidential Information prior to being exposed to any Confidential Information or Highly Confidential Information.

7. Limited Disclosure of Confidential Information. The disclosure of Confidential Information and Highly Confidential Information is strictly limited to individuals who a) comply with all terms and conditions of this Protective Order; b) satisfy the terms and conditions of the section entitled Qualified Persons above, including without limitation, at least one of sections 6(a) through 6(c) above, and c) are not presently, or within the next three (3) years, involved, directly or indirectly, in any matters pending before a patent authority relating to the subject matter of this litigation.

8. Disclosure to Certain Persons Prohibited. Under no circumstances may Confidential Information or Highly Confidential Information—or any materials incorporating or reflecting such information—be disclosed to anyone for whom the disclosure creates an unreasonably high risk of prejudice—apart from the ordinary prejudice resulting from a potentially adverse result in this litigation—to the disclosing party ("Prohibited Persons"). The class of Prohibited Persons includes at least individuals involved, either presently or within the next three (3) years, in matters before the United States Patent and Trademark Office, including without limitation, patent prosecution, reexamination proceedings, and /or reissue proceedings relating to the subject matter of this lawsuit. The class of Prohibited Persons also includes any individuals directly

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involved in the design and development of products relating to the subject matter of this lawsuit, either presently or within the next three (3) years.

Each party shall take reasonable steps to ensure that Prohibited Persons are not provided with access to another party's Confidential or Highly Confidential Information.

Upon learning that Confidential Information and/or Highly Confidential Information has been disclosed, whether inadvertently or not, to a Prohibited Person, immediate steps shall be taken to 1) retrieve any Confidential or Highly Confidential Materials from the Prohibited Person; 2) notify the disclosing party of the disclosure, including information sufficient to identify the discovery materials improperly disclosed and the Prohibited Person(s) to whom disclosure was made; 3) disclosing information relating to the relevant activities of the person(s) to whom disclosure was improperly made sufficient to assess the risk that the disclosing party will be prejudiced by the disclosure; and 4) taking steps to minimize the risk of prejudice to the disclosing party resulting from the improper disclosure.

Any of Voith's counsel engaged in representing Voith, either as of the date of this Order or anytime in the next three (3) years, in matters relating to the subject matter of this lawsuit that are pending, or will be pending, before the PTO, including without limitation patent prosecution and reexamination proceedings, shall be considered a Prohibited Person and be excluded from access to JohnsonFoils's Confidential or Highly Confidential Information.

Similarly, any of JohnsonFoils's counsel engaged in representing JohnsonFoils, either as of the date of this Order or anytime in the next three (3) years, in matters relating to the subject matter of this lawsuit that are pending, or will be pending, before the PTO, including without limitation patent prosecution and reexamination proceedings, shall be considered a Prohibited Person and be excluded from access to Voith's Confidential or Highly Confidential Information.

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The parties agree that the measures stated in this section, together with other provisions of this Protective Order, are sufficient to satisfy the aforementioned requirement that Prohibited Persons are excluded from access to Confidential Information and/or Highly Confidential Information. Because this limitation is related only to the disclosure of Confidential or Highly Confidential information of a party, nothing in this Paragraph 8, or any other provision of this Protective Order, is intended to prevent counsel for either party from consulting with any person, including a Prohibited Person regarding issues or matters involved in the litigation, provided that no Confidential or Highly Confidential Information of another party is disclosed, directly or indirectly, to such Prohibited Person.

9. Designation of Persons with Access to Confidential and/or Highly Confidential Information. A potentially Qualified Person is proposed for designation by serving a signed and executed copy of the Undertaking, attached to this Protective Order as Exhibit A, together with any required Background Information, on the non-designating party. Except as otherwise provided by this Order or by this Court's Local Rule 26.2 ("Confidentiality"), Qualified Persons may be exposed to Confidential Information or Highly Confidential Information only after being properly designated in accordance with the following terms and conditions. With respect to persons proposed-to-be-designated pursuant to paragraphs 6(b) and 6(c) (except for court personnel), background information sufficient to ascertain the existence of potentially disqualifying facts shall be provided ("Background Information") as follows:

a) Background Information for persons proposed-to-be-designated pursuant to paragraph 6(b), shall include, at least, the person's name, address, occupation (including job title and description of responsibilities) and an updated curriculum vitae providing sufficient details of that person's consulting work and experience in order to ascertain – for the past 10 years – that

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person's employer and the scope and subject matter of the engagement. In addition, persons proposed-to-be-designated pursuant to paragraph 6(b) shall provide a general description of their involvement, or lack thereof, in any matters pending before any patent authority or in any product design, including without limitation any design-around to the Patents-in-Suit, or product development, having subject matter relevant to the subject matter of this lawsuit.

b) Background Information for persons proposed-to-be-designated pursuant to paragraph 6(c), except for court personnel, shall include the person's name, address, and occupation (including job title and description).

The appropriate Background Information, as required above, of any person proposed-to-be-designated a Qualified Person, shall be served upon the attorneys of record for the non-designating party.

A proposed-to-be-designated person pursuant to paragraph 6(c), unaffiliated with any party and otherwise qualified under the terms and conditions of this Protective Order, such as, for example, court reporters, stenographic reporters, certified translators, and certified interpreters, will be deemed a Qualified Person upon execution of the Undertaking attached to this Protective Order as Exhibit A, and delivery by any means to the non-designating party. For example, court reporters, stenographic reporters, certified translators, and certified interpreters, will be deemed Qualified Persons upon providing to counsel for the non-designating party an executed copy of the Undertaking at any time before commencement of a deposition in which Confidential or Highly Confidential Information may be disclosed.

For all others, a proposed-to-be-designated Qualified Person may only become a designated Qualified Person after notice and opportunity for the non-designating party to object as follows. Unless the designating party receives notice of an objection in writing, to a

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proposed-to-be-designated person, within seven (7) business days, such person shall thereafter be deemed a designated Qualified Person. The date within which an objection must be made is computed in accordance with Fed. R. Civ. P. 6 and this Court's Local Rules. Any such objection to a proposed-to-be-designated person must be in good faith and the reasons for it shall be stated in writing. In the event of any such objection to a proposed-to-be-designated person, there shall be no disclosure of Confidential Information or Highly Confidential Information to such person, except by agreement of the parties or further order of the Court.

The parties shall make a good faith effort to resolve any dispute over an objection. If the parties are unable to resolve their dispute in good faith, the party to whom the objection has been made shall so advise the objecting party in writing. To preserve the objection, the objecting party must seek relief from the Court within ten (10) days, computed in accordance with Fed. R. Civ. P. 6 and this Court's Local Rules, of the effective date of service of the notice that the parties are unable to resolve the dispute. If the objecting party fails to seek relief within that time period, the objection shall be deemed withdrawn. If the objecting party timely requests relief from the Court as provided above, there shall be no disclosure of Confidential Information or Highly Confidential Information to such proposed-to-be-designated person, except by agreement of the parties or further order of the Court.

10. Witness Examinations

Examination Attendees other than Witnesses. Only properly designated Qualified Persons will be allowed to attend that portion of a witness examination in which Confidential Information or Highly Confidential Information of a party is used or elicited.

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Fair Use. Once a party has used confidential documents or information, or elicited confidential information, in examining any witness, the other party may use said confidential documents or information in its examination of the same witness without any further action.

Limited Disclosure to Information Source Party Witnesses Permitted. Except as otherwise provided by agreement of the parties in writing, this Protective Order, or further order of the Court, Confidential Information and/or Highly Confidential Information of a party may be disclosed to a witness with a past or present affiliation with that party, only as specifically provided below:

(a) Any witness testifying under oath who is an employee, officer or director of a party may be examined with respect to Confidential Information or Highly Confidential Information of that party.

(b) Any witness testifying under oath who was previously (i) an employee, officer or director of; (ii) an individual or an employee of any entity which was a consultant, representative, agent, licensee to or licensor of, or (iii) an individual or an employee of any entity which was an assignee to or assignor of the party who produced such Confidential Information or Highly Confidential Information may be examined only with respect to Confidential Information or Highly Confidential information to which such person or entity had actual access at any time during his or her association to the party or which such person participated in preparing.

(c) Any witness not covered by (a) or (b) of this paragraph may be examined as a witness at hearing/trial or during a deposition concerning any Confidential Information or Highly Confidential Information which that person had lawfully received or generated prior to and/or apart from this lawsuit. During examination, any such witness may be shown Confidential

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Information or Highly Confidential information of a Producing Party which appears on its face or from other documents or testimony to have been received previously by that witness, communicated to that witness or generated by that witness.

(d) All such witnesses of subparagraphs 10(a) through 10(c) above who are exposed to Confidential Information or Highly Confidential Information shall be cautioned against the disclosure of such information to others and shall continue to be bound by any previously entered nondisclosure or confidentiality restrictions relating to the Confidential Information or Highly Confidential Information.

11. Scope of Use of Confidential Materials. None of the individuals identified under paragraph six (6) shall disclose or disseminate, directly or indirectly, any Confidential Information or Highly Confidential Information for any purpose except as expressly permitted by this Protective Order, further stipulation of the parties in writing, or by further Order of the Court.

Nothing in this Order shall bar or otherwise restrict an attorney herein from communicating with other attorneys or rendering advice to a client, and, in the course thereof, referring to or relying upon his examination of confidential information; provided, however, that in rendering such advice and in otherwise communicating with other attorneys or a client, the attorney shall not make any disclosure of information designated Confidential Information or Highly Confidential Information, in whole or in part, directly or indirectly, until and unless the recipient of the disclosure is designated as a Qualified Person entitled to review such a disclosure under the terms of this Protective Order, by agreement of the parties in writing, or by further order of the Court. The parties agree that such communications and/or advice improperly discloses Confidential Information or Highly Confidential Information if, and only if, the advice

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makes a recipient more certain of the existence or nonexistence of a confidential or highly confidential fact for which the recipient does not have express authorization pursuant to the terms of this Protective Order, agreement of the parties, or further Order of the Court.

12. Consent to Disclosure of Confidential Material. Nothing shall prevent disclosure beyond the terms of this Protective Order if the party designating the information as Confidential Information or Highly Confidential Information expressly consents in writing to such disclosure, or if the Court, after notice and reasonable time to object is given to all parties, orders such disclosure.

13. No Disclosure Required. This Protective Order limits the disclosure of Confidential Information and Highly Confidential Information of a party. Except where expressly provided, this Protective Order does not affirmatively require the disclosure of any Discovery Material.

14. Privileged Material. This Protective Order incorporates all restrictions on the disclosure of information arising from the proper assertion, pursuant to Fed. R. Civ. P. 26(b)(5)(A), of the attorney-client privilege, the attorney work-product immunity, and all other applicable privileges. Nothing in this Protective Order requires the disclosure of any material, including documents, information, or things, which a party contends, pursuant to Fed. R. Civ. P. 26(b)(5)(A), is protected from disclosure by the attorney-client privilege, the attorney work-product immunity, or other applicable privileges.

15. Challenge of Designation.

No Waiver. A party shall not be obligated to challenge the propriety of a Confidential Information or Highly Confidential Information designation at the time the designation is made, and a failure to do so shall not preclude a subsequent challenge thereto.

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Objections. A party may, at any time, object to another party's confidentiality designation by providing the other party with sufficient information to identify the Discovery Material at issue and the basis for the objection. The parties shall promptly confer and attempt to resolve the dispute in good faith.

If a party agrees in writing to change the confidentiality designation of any Discovery Material, the Discovery Material shall be treated under the corrected designation from the date of said agreement. Unless otherwise agreed by the parties, the party redesignating any Discovery Material shall promptly supply substitute Discovery Material bearing the corrected confidentiality designation.

If after ten (10) business days from the date notice of the objection was served, as determined pursuant to Fed. R. Civ. P. 5 and 6 and the Court's Local Rules, the dispute is not resolved, the objecting party may, at any time thereafter, seek relief from the Court pursuant to Fed. R. Civ. P. 37(a) and the Court's Local Rules. The Discovery Material at issue shall continue to be treated as designated (Highly Confidential or Confidential) until the parties agree otherwise or until further order of the Court.

16. Filing of Confidential Material. Materials designated as Confidential Information or Highly Confidential Information, or materials containing, referring, or reflecting information designated Confidential Information or Highly Confidential Information, shall be filed "Under Seal" in accordance with the rules of the Court. Absent receiving notice of inadvertent disclosure under the terms of this Protective Order, nothing in this provision shall prevent a party from including in the public record any material designated Confidential Information or Highly Confidential Information that the designating party first files in the public record.

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17. Modification of This Protective Order. This Protective Order may be modified by further written agreement of the parties, or by further order of the Court. Nothing in this Order shall be deemed to preclude any party from seeking a modification of this Protective Order or from seeking other protective orders pursuant to Fed. R. Civ.P. 26(c).

18. Fair Use of Confidential Material. Except where Confidential Information or Highly Confidential Information is obtained as the direct or indirect result of an inadvertent disclosure for which notice has been provided pursuant to this Protective Order, this Protective Order shall not be construed to prevent any person, including a Qualified Person, from disclosing or making use of information designated Confidential Information or Highly Confidential and that (a) was lawfully in their possession prior to production by the supplying party, (b) appears in any issued patent or printed publication, or other published material available to the public, through no violation by any party of the terms of this Protective Order, (c) was or is hereafter obtained from a source or sources having the lawful right to disclose such information, (d) was or is lawfully discovered, independently by the receiving party, through means not under an obligation of secrecy to any other party or parties, or (e) is exempted from the operation of this Protective Order by the express written consent of the party designating such Confidential Information or Highly Confidential Information.

19. No Admissions. A party's confidentiality designations shall not be construed to indicate anything other than a party's good faith invocation of the protections of this Protective Order at the time the designation was made. Neither this Protective Order nor a party's designation of any material as Confidential Information or Highly Confidential Information shall be construed as an admission of any kind, including, without limitation, any admission that such information, document or other tangible thing is confidential or not publicly known or that such

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material, or any testimony relating to such material, in a deposition or at trial, would be admissible in evidence in this case or in any other proceeding.

20. Duration of Order. The provisions of this Protective Order shall, absent agreement of the parties, or further order of the Court, continue to be binding throughout and after the conclusion of this action, including, without limitation, any appeals therefrom. Within sixty (60) days after receiving notice of the entry of an order, judgment or decree finally disposing of this action, including any appeals therefrom, all persons having received materials designated Confidential Information or Highly Confidential Information shall either return to counsel for the designating party all such materials, including any documents or things containing, reflecting, or derived from such information or materials, and all copies thereof, or destroy such materials and all copies thereof. A party's counsel of record shall ensure that anyone provided with materials from another party containing, reflecting, or derived from the others party's designated Confidential Information or Highly Confidential Information complies with the obligation to return or destroy all materials containing, reflecting, or derived from such information. The party's counsel of record shall provide a certification in writing to counsel of record for the designating party expressly attesting and confirming that aforementioned return or destruction of all such materials. Counsel described in paragraph 6(a) above shall be entitled to retain court papers, deposition and trial transcripts and attorney work product (including court papers, transcripts, and attorney work product that contain Confidential Information or Highly Confidential Information) provided that such counsel, and employees of such counsel, shall not disclose any such Confidential Information or Highly Confidential Information contained in such court papers, transcripts, or attorney work product to any person or entity except pursuant to a written agreement of the parties, this Protective Order, or further order of the Court. All material

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returned to the parties or their counsel by any individual, or the Court, likewise shall be disposed of in accordance with this paragraph.

Dated: ______________________

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

VOITH PAPER GMBH & CO. KG,	)
	)
Plaintiff,	)
	)
v.	)C.A. No. 07-226-JJF)
JOHNSONFOILS, INC.,	)
	)
Defendant.	)
______________________________	)

UNDERTAKING

I ,______________________, being first duly sworn on oath, hereby swear and affirm the following:

1. I am participating in this case on behalf of the following party: [Voith, JohnsonFoils] (select one) ("the Sponsoring Party").

2. My Contact Address is:

____

____

____

____

3. I have read and understand the terms and conditions of the STIPULATED PROTECTIVE ORDER dated ____________________.

4. I further understand that the STIPULATED PROTECTIVE ORDER specifies the terms and conditions under which I may obtain access to Confidential Information or Highly Confidential Information, as those terms are defined in the STIPULATED PROTECTIVE ORDER, of a party other than the Sponsoring Party, including documents, things, and/or

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information, including any documents, things, or information containing or reflecting information derived from such documents, things, and/or information in whole or in part (collectively, "Confidential Material").

5. I am a "Qualified Person" as that term is defined in Paragraph 6. I specifically meet the terms and conditions of Paragraph 6, Specific Qualifications, subsection [a b c] (Circle One) of the STIPULATED PROTECTIVE ORDER.

6. I certify and attest that I have not and will not, except where expressly authorized by the Court or the STIPULATED PROTECTIVE ORDER, obtain or review Confidential Material of a party other than the Sponsoring Party prior to confirming that I have fully satisfied the terms of conditions of designated Qualified Persons, including, without limitation, the terms and conditions of paragraph 9 of the STIPULATED PROTECTIVE ORDER entitled "Designation of Persons with Access to Confidential and/or Highly Confidential Information."

7. I shall, upon receiving notice that my access to Confidential Material has been terminated, or upon receiving notice that this litigation has terminated, including any appeals therefrom, whichever comes first, return any and all Confidential Material, including without limitation any originals and/or copies of documents or things containing or reflecting Confidential Material in whole or in part, to counsel who provided such documents, things and/or information to me. I shall likewise provide to said counsel any notes and memoranda I have which in any way contain, concern, or reflect, Confidential Material. To the extent that I have created any electronic files embodying, containing, or reflecting Confidential Material, I further agree to erase all such files, including archive or other copies, using such means as to ensure that such files cannot be reconstructed. I understand that my obligation to return and/or destroy

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Confidential Material is a continuing one and applies to any Confidential Material that comes into my possession at any time.

8. If at any time I become aware that the terms or conditions of the STIPULATED PROTECTIVE ORDER have been or will be violated I will promptly notify (or cause to be notified) the party who designated the Confidential Material, said notification identifying in detail the nature and scope of the Confidential Material involved in the breach and the circumstances surrounding the breach. In addition, I will immediately take all practicable steps to protect the Confidential Material from being improperly disclosed or used.

9. I consent to the continuing jurisdiction of the above entitled Court over my person for purposes of enforcement of the STIPULATED PROTECTIVE ORDER. I agree that the harm to any party from disclosure or misuse of its Confidential Material is irreparable and, therefore, I concede that injunctive relief is appropriate for any violation.

10. I declare under penalty of perjury that the foregoing is true and correct.

Dated: ____________________________ Signature: ___________________________________

Exhibit 20

Volpe and Koenig P.C.

United Plaza, Suite 1600
30 South 17th Street
Philadelphia, PA 19103

Telephone: +1-215-568-6400
Facsimile: +1-215-568-6499
www.volpe-koenig.com

BRINGING LAW TO YOUR IDEAS®

Anthony S. Volpe
avolpe@volpe-koenig.com

October 24, 2007

VIA E-MAIL ONLY

Neil Goldberg, Esquire
Greenblum & Bernstein, P.L.C.
1950 Roland Clarke Place
Reston, VA 20191

Re: *Voith Paper GMBH & Co. KG v. JohnsonFoils, Inc.*
U.S.D.C. for the District of Delaware
Civil Action No. 07-226-JJF

Dear Neil:

We write as follow up to our October 24, 2007 "discussion" and in response to your October 24, 2007 e-mail. As an initial matter, we did not have any "discussion" as Michael Fink spoke over me and finished my sentences each time I attempted to respond to your statements. We "abruptly" terminated the phone conference after requesting that Michael stop interrupting us.

Moreover, we are shocked by your accusations that we delaying document production by "hiding" behind your failure to provide a protective order. Since August 24, 2007, we have inquired on no less than four (4) separate occasions whether you intend to circulate the promised protective order in order to facilitate document production. On each occasion, the reply was that it will be coming soon (and in particular Michael Fink's letter September 21, 2007 letter stated that the protective order would be circulated during the early portion of the week of September 24, 2007). We also remind you that we have been available to discuss this and all other discovery issues with you for the past two months, including the October 1, 2007 telephone conference that you scheduled with us and did not bother to show up for (in fact, we did not receive any courtesy communication from you regarding your failure to keep this appointment that you scheduled).

We are also surprised that you have delayed circulating a draft of the protective order for over (2) months, and now accuse us of delay. As we previously advised you, it would be a waste of the parties' time and expense to initially produce documents as attorneys' eyes only pursuant to Local Rule 26.2, and then duplicate this effort by performing a second review of these documents for the appropriate level of confidentiality pursuant to a protective order. Such duplication of efforts

Volpe and Koenig P.C.

should be easily avoided by agreeing to the terms of the protective order beforehand.

Your characterization of our position that we "are entitled to withhold documents until an agreed protective order is entered" is an intentional misstatement. We understand Local Rule 26.2; however, you have misled us for over two (2) months into believing that a protective order would be forthcoming, and as discussed above, entry of protective order would avoid duplication of effort in appropriately designating documents. We find this to be reasonable based on the scope and quantity of documents you have requested, and do not understand the continued basis for your delay to circulate the protective order.

During today's conference, Michael Fink further advised us for the first time that he already decided that there will be two (2) levels of confidentiality in this case, "confidential" and "highly confidential," and that we should have already began marking our documents accordingly. The terms of a protective order must be mutually agreed upon by both parties or decided by the Judge. Michael's dictation of the levels of confidentiality in this case are not controlling. Furthermore, without having the benefit of reviewing the protective order, we do not have any inclination as to how the "confidential" and "highly confidential" levels should be applied. Again, we remind you that this could easily be resolved by actually circulating the protective order so we can reach an agreement.

During our conference you stated that you are currently preparing documents to be produced tomorrow, October 25, 2007, in accordance with Michael's "confidential" and "highly confidential" designation. Please understand that we do not agree to these designations and are not bound to them without entry of a protective order. We will not be sympathetic to any duplication of effort on your behalf to actually mark your documents appropriately when a protective order is entered.

Because we were not able to hold a discussion on the format for document production, we propose that all documents be produced as single page tiff images. We use a Concordance load file, and we can produce JohnsonFoils' documents with whatever type of load file you require. Please confirm with your agreement to this proposal.

Volpe and Koenig P.C.

We remain interested in resolving these issues and believe that they can be resolved without the court's intervention. However, we will require that Michael exercise professional courtesy in allowing us to respond to your assertions without speaking over us on any future conferences.

We again request that you circulate a protective order as you previously promised so we can move past these issues and proceed with discovery in a reasonable manner.

Very truly yours,

Volpe and Koenig, P.C.

By: __________________
Anthony S. Volpe

ASV/RWO

cc: Michael J. Fink, Esquire (via e-mail only)
Adam Wyatt Poff, Esquire (via e-mail only)
George H. Seitz, III, Esquire (via e-mail only)
Patricia McGonigle, Esquire (via e-mail only)

Exhibit 21

LAW OFFICES
GREENBLUM & BERNSTEIN, P.L.C.
PATENT, COPYRIGHT AND TRADEMARK MATTERS
1950 ROLAND CLARKE PLACE
RESTON, VA 20191-1411
TEL: (703) 716-1191
FAX: (703) 716-1180
EMAIL: gbpatent@gbpatent.com
www.gbpatent.com

NEIL F. GREENBLUM
BRUCE H. BERNSTEIN
JAMES L. ROWLAND
ARNOLD TURK
MICHAEL J. FINK
STEVEN WEGMAN *
WILLIAM PIEPRZ *
STEPHEN M. ROYLANCE
ROBERT W. MUELLER
WILLIAM E. LYDDANE
WILLIAM S. BOSHNICK *
PAUL A. BRAIER, Ph.D.
P. BRANKO PEJIC *
JOHN PRETA *
HERIBERT F. MUENSTERER, Ph.D. □ °
LINDA J. HODGE
JOSHUA M. POVSNER *
DANIEL B. MOON
PAUL T. LEE Δ
JOHN V. MAZZOLA □
JAMES KENNETH MOORE, JR.
ENOCH PEAVEY
ANDREW WRIGHT
KATRIN VENTER, Ph.D. □
AZZA JAYAPRAKASH
JONATHAN MILLER *

NEAL GOLDBERG
STEVEN B. POLLICOFF *
FAHD MAJIDUDDIN, Ph.D. □
SARAH J. SMALL

OF COUNSEL:
BRUCE H. STONER, JR.
ANDREW M. CALDERON
CHARLES S. MURRAY, JR. *
SEAN MYERS-PAYNE, Ph.D.
LESLIE J. PAPERNER *
RICHARD J. McGRATH
BARRY I. HOLLANDER

TECHNICAL ADVISORS:
THOMAS WEBER, Ph.D.
ZHIDONG HAO, Ph.D.
MONICA S. ULLAGADDI
BO BIN JANG Ph.D.
WALTER SCHLAPKOHL, Ph.D.

* ADMITTED TO A BAR OTHER THAN VA
° EUROPEAN PATENT ATTORNEY
Δ KOREAN PATENT ATTORNEY
□ REGISTERED PATENT AGENT

November 7, 2007

VIA EMAIL(PDF) AND FEDERAL EXPRESS

Tony Volpe, Esq.
Volpe and Koenig, P.C.
United Plaza, Suite 1600
30 South 17th Street
Philadelphia, PA 19103

Re: *Voith Paper GmbH & Co. KG v. JohnsonFoils, Inc.*
C.A. No. 07-0226-JJF. Our Ref.: 214720.

Dear Tony:

Please find enclosed documents bearing production numbers within the range VTH 000001 – VTH 005391. Many of these documents are marked "HIGHLY CONFIDENTIAL," *i.e.*, the highest level of confidentiality which we proposed to you in our letter dated September 21, 2007, and which we specified in the proposed protective order which we provided to you on October 31. Pursuant to Del. R. 26.2 ("Rule 26.2"), all documents that we have designated CONFIDENTIAL or HIGHLY CONFIDENTIAL, and any information contained therein, are provided for **Attorneys' Eyes Only** and are strictly limited to attorneys who have entered an appearance in the above referenced litigation and, as necessary, their supervised employees. As required by Rule 26.2, any persons provided access to documents or information designated confidential or highly confidential by Voith "are under an obligation to keep such documents confidential and to use them only for purposes of litigating the case." Rule 26.2.

Furthermore, until the terms of the protective order are agreed upon, the enclosed documents are provided subject to the additional precondition that no attorney at your firm involved in patent related matters before any patent granting authority or agency anywhere in the world relating to the subject matter of this lawsuit, including without limitation matters on behalf of JohnsonFoils, Inc. and/or its affiliated companies anywhere in the world, *e.g.*, AstenJohnson Inc., is permitted access to any documents designated "HIGHLY CONFIDENTIAL," or any information contained therein. Accordingly, any individual who views documents designated HIGHLY CONFIDENTIAL, or to whom any information contained therein is disclosed, is hereby noticed that they are precluded from participation in the above described patent related matters. These documents are provided subject the further precondition that any individual authorized to view confidential documents pursuant to Rule 26.2 who is provided access to documents designated CONFIDENTIAL or HIGHLY CONFIDENTIAL, or to whom any information contained therein is disclosed, is provided with a copy of this letter prior to any such disclosure.

In view of the remarkable assertion in your letter dated October 24, 2007, over a month after our confidentiality designations were originally proposed to you, that you "do not agree to [Voith's CONFIDENTIAL and HIGHLY CONFIDENTIAL] designations and are not bound to them without entry of a protective order," we insist that you confirm in writing your acceptance of the terms of this letter prior to reviewing the enclosed documents.

Very truly yours,

GREENBLUM & BERNSTEIN, P.L.C.

Neal Goldberg

Enclosure: Documents bearing production numbers in the range VTH 000001 – VTH 005391 (by FedEx only)

Exhibit 22

Volpe and Koenig P.C.

United Plaza, Suite 1600
30 South 17th Street
Philadelphia, PA 19103

Telephone: +1-215-568-6400
Facsimile: +1-215-568-6499
www.volpe-koenig.com

BRINGING LAW TO YOUR IDEAS®

Anthony S. Volpe
avolpe@volpe-koenig.com

November 8, 2007

Neal Goldberg, Esquire
Greenblum & Bernstein, P.L.C.
1950 Roland Clarke Place
Reston, VA 20191

VIA UPS

Re: *Voith Paper GMBH & Co. KG v. JohnsonFoils, Inc.*
U.S.D.C. for the District of Delaware
Civil Action No. 07-226-JJF

Dear Neal:

We received your November 7, 2007 letter and the boxes of documents. After reading your letter and the unilateral demands in it, I instructed our mail room that the boxes were not to be opened or docketed. The unopened boxes are being returned overnight as we do not accede to your demands. As we said previously, we will provide comments on your draft protective order as soon as possible. When that is agreed, we will accept documents in accordance with it.

With respect to documents from Voith US as part of Plaintiff's responses to JohnsonFoils' requests for production, we are still awaiting your answer to our October 23, 2007 inquiry. Will you stipulate that Voith US is either a party to this action or under the custody or control of Plaintiff and provide a separate identification of all documents produced from Voith US?

Very truly yours,

Volpe and Koenig, P.C.

By: ______________
Anthony S. Volpe

ASV/RWO/cps

cc: Michael J. Fink, Esquire (Letter only via e-mail only)
Adam Wyatt Poff, Esquire (Letter only via e-mail only)
George H. Seitz, III, Esquire (Letter only via e-mail only)
Patti McGonigle, Esquire (Letter only via e-mail only)